1945. File No. S. Dwr 3/45

Legal DEPARTMENT
A BRANCH

Subject. Dharwar C.S. no. 10, 44

~~Mahadeo~~
plts { Madhavrao Balkrishna Jakati }

Vs

deft { (1) The Provincial Government of Bombay
(2) The Registrar, Co-operative Societies, Bombay Province, Poona.

claim - Rs. 200

— x.x —

Civil Suit- No 2 of 1944

Venkatrao Bhimrao Desai :- Plaintiff

V.S

(1) The Provincial Government of Bombay
(2) The Registrar, Co-operative Societies, Bombay Province, Poona

claim :- Rs. 200

F.A. no. 470/45

File No. S. Dwr 3/45

Std. Book Slip No. 2

CONTENTS

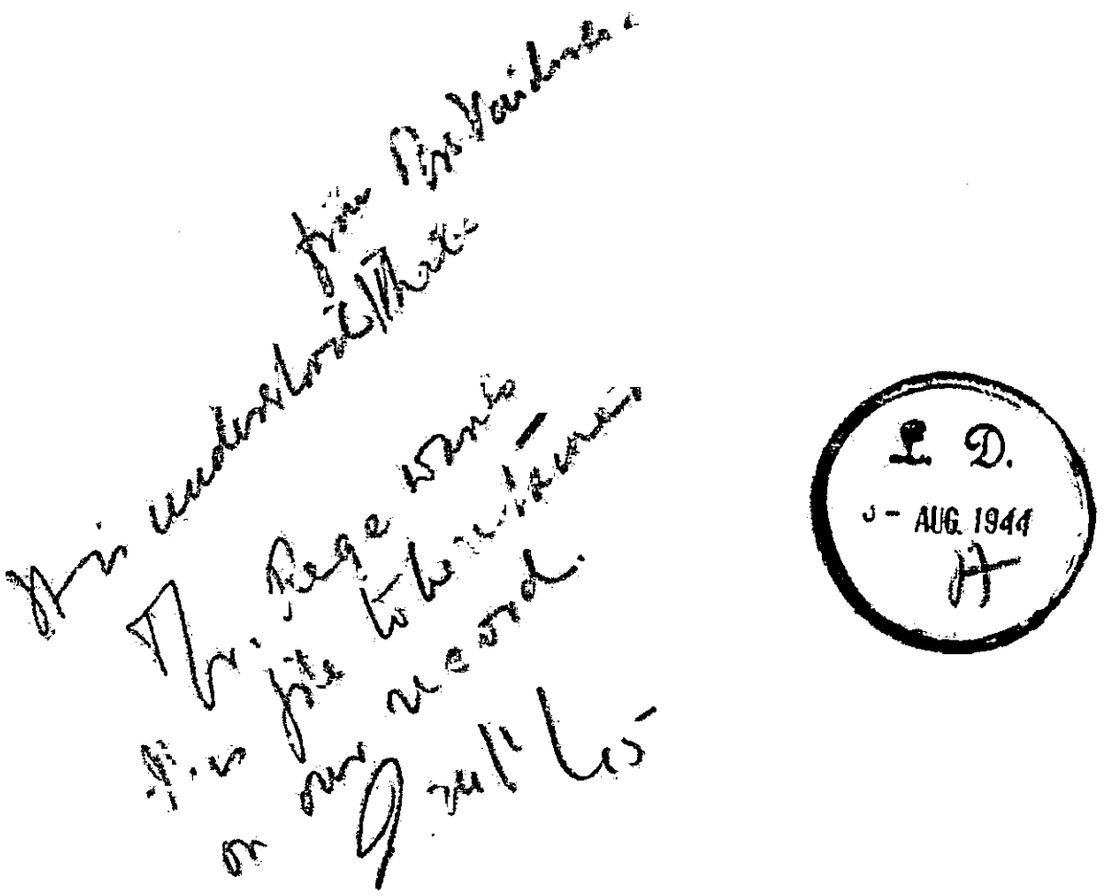
Legal Department File No1 S.Dwr. 3/45.

Sr. No.	Compilation No.	Subject	Pages
	1	Suits Dharwar C.S.No. ~~70~~ 1 of 1944 M. B. Jakati v/s Plff 1) The Provincial Govt of Bombay. 2) The Registrar, Co-operative Societies, Bombay Province, Poona. Defts claim Rs. 200 C.S.No. 20 of 1944 V. B. Desai v/s Plff 1) The Provincial Govt. of Bombay 2) The Registrar, Co-operative Societies, Bombay Province, Poona claim Rs. 200.	
1	Printed G.R. L.D. No. 7079 11th Oct. 1944	For a declaration that the order is illegal and ultra vires and for costs and other reliefs. Sanctioning the defence of the suits.	7

CONTENTS

Legal Department File Nol S. Dor. 3/45

Sr. No.	Compilation No.	Subject	Pages
2	G.R. L.D. No. 492 19th Jan. 1946	Recording the result of the suits	29
3	G.R. L.D. No. 872 31 st Jan. 1946	Sanctioning the defence of the Civil Appeal No. 248 of 1945.	61
4)	G.R. L.D. No. 1970 9th March 1946	Sanctioning the defence of First Appeal No. 470 of 1945.	71
5		Judgment	73
6	G.R. L.D. No. 13032 16 th Nov. 1949	Recording the result of the appeal	85
7	G.R. L.D No. 9060 11 th August 1949	Recording the result of the appeal	97


L. D.
3 - AUG. 1944

84 L.D. 9

Dharwar Civil Suits Nos. 1 and 2 of 1944.

These two suits are filed against the Province of Bombay and the Registrar, Co-operative Societies, Bombay; by persons who were respectively the Managing Director and Director of the Dharwar Urban Co-operative Bank Ltd. The plaintiffs have challenged the correctness and legality of an order passed by the Deputy Registrar on 21st April 1942 holding the plaintiffs liable to contribute certain sums as compensation for losses caused to the bank as a result of their misfeasance and breach of trust. The plaintiffs contend that they were not guilty of misfeasance or breach of trust and that no loss has been caused to the bank on account of any delinquency on their part. They have raised a large number of contentions each of which has been dealt with and traversed separately in the accompanying

brief and draft written statements. On merits the plaintiffs contentions are untenable. In addition the technical defences of jurisdiction, want of notice and limitation are also available.

Sanction may be accorded to the defence of the suits on the lines of the accompanying brief. Draft written statements are also put up for approval.

RLH 2.2.9

R.L.H Pmm 5.9.44

Secy A.D.

6/10/44

Civil Suit No. 2 of 1944.

In the Court of the First Class Sub-Judge, at Dharwar.

Venkatesh Bhimarao Desai ... Plaintiff.

versus.

The Provincial Government of Bombay ... Defendant.

Written Statement on behalf of the defendants is as follows:-

1. This Court has no jurisdiction to entertain this suit under section 51 of the Bombay Co-operative Societies Act,1925.

2. The suit is bad for want of notice under section 80 of the Civil Procedure Code. The plaint also does not contain a proper averment of the delivery of notice as required by that section. The plaint is therefore liable to be rejected under Order VII Rule 11 of the Code.

3. The suit is also time barred under Article 14 of the Limitation Act.

4. The plaintiff's allegations in the plaint are denied in toto The Dharwar Urban Co-operative Bank was ordered to be wound up on 27th January 1940. It was not in liquidation since 1939 as alleg by the plaintiff in plaint para 1.

5. The Order of the Deputy Registrar was legal and intra vires. Under Government Notification,Revenue Department No.522/23, dated 31st July 1939. The powers to hold inquiry into cases of alleged misfeasance and breach of trust under section 50-A of the Bombay Co-operative Societies Act,1925 were delegated to the Deputy Registrar, and the inquiry held by him into the 20 cases of alleged misfeasance and breach of trust was the exercise of the powers so delegated to him. His order was therefore intra vires and plaintiff's allegations to the contrary are not true and are denied.

6. The plaintiff's allegation that the Registrar and the Deputy Registrar were disqualified to inquire into these matters as the Liquidator was working under them is incorrect and denied. Though the liquidator was a departmental employee be still

acted ....

acted ~~under~~ independently in his capacity as a liquidator. Moreover neither the liquidator nor the Registrar had any personal interest in the Bank.

7. The defendants further submit that action under section 50-A of the Bombay Co-operative Societies Act, can be taken only during winding up proceedings. The Bank was ordered to be wound up in 1940 and these proceedings started soon after the liquidator made application in that behalf to the Registrar. No particular time limit has been prescribed in the Act or Rules within which such action should be taken. The plaintiff cannot therefore challenge the legality of the inquiry and order on the ground that the inquiry was held a very long time after the said transactions.

8. The defendants further submit that section 50-A does not provide for action being taken against the heirs of the deceased directors. under the plaintiff was ordered to contribute only for such losses as were caused to the Bank by his own misfeasance and breach of trust. It was therefore not necessary to make the heirs of the deceased ~~directions~~ directors parties to the inquiry. Plaintiff's allegation in that behalf are denied.

9. The defendants further submit that Special Auditors appointed by the Registrar in 1931 and the Special Committee appointed by the General Body were not appointed to deal with these individual cases of bad debts. Their reports have no bearing on these particular cases of loan transactions and plaintiff's allegations in that behalf are therefore denied.

10. It is incorrect and misleading to state that the Deputy Registrar ignored the existance of loan rules framed by the General Body. There were no such "loan rule" as alleged by the plaintiff except the bye laws which the plaintiff has carefully considered.

11. The Deputy Registrar's decision charging theplaintiff with Special liability is perfectly valid. Plaintiff's contentions to the contrary are denied.

12. The Deputy Registrar has dealt with each individual item of bad debts seperately and has found that the loss was caused by the Plaintiff's misfeasance and breach of trust. His order

directing ....

5

10
35

directing to pay Rs.1500/- is justified notwithstanding plaintiff's contentions to the ~~contrary~~ contrary.

District Government Pleader.
Dharwar.

I District Government Pleader, Dharwar, do hereby declare that what is stated in paragraphs 1 to above is true according to the information received and believed to be true. This verification is made at on the day of 1944.

District Government Pleader,
Dharwar.

7

23

Suits :

Dharwar.

For a declaration that the order passed by the Deputy Registrar, Co-operative Societies, on 21st April 1942 in case No. MSF 1 of 1940 and confirmed in appeal by Government on 3rd November 1942, is illegal and *ultra vires* and for costs and other reliefs.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 7079.

Bombay Castle, 11th October 1944.

Letters from the Collector of Dharwar, Nos. LAW. 441 and 442, dated the 29th June 1944—Forwarding papers in the suits noted in the margin ; and requesting sanction to their defence.

IN THE COURT OF THE FIRST CLASS SUB-JUDGE, DHARWAR.

Civil Suit No. 1 of 1944.

Madhavrao Balkrishna Jakati .. .. .. Plaintiff ;

versus

(1) The Provincial Government of Bombay ..
(2) The Registrar, Co-operative Societies, Bombay Province, Poona .. .. .. } Defendants

Claim—Rs. 200.

Civil Suit No. 2 of 1944.

Venkatrao Bhimrao Desai .. .. .. Plaintiff ;

versus

(1) The Provincial Government of Bombay ..
(2) The Registrar, Co-operative Societies, Bombay Province, Poona .. .. .. } Defendant

Claim—Rs. 200.

Endorsements by the Commissioner, Southern Division, Nos. L.S.T. 313 and 314, dated the 8th July 1944—Forwarding the above with his concurrence.

Endorsement by the Registrar of Co-operative Societies and Director of Rural Development, Poona, No. M.S.F./L.Q.D./2007, dated the 29th July 1944—Forwarding the above with his remarks.

Memorandum to the District Government Pleader, No. 7078, dated the 11th October 1944—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suits on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original. P.N. Moos

P. N. MOOS,
Secretary to Government.

G. R., No. 7079, L. D., dated the 11th October 1944.

To

* The Revenue Department,
The Registrar of Co-operative Societies and Director of Rural Development, Poona,
* The Commissioner, Southern Division,
* The Collector of Dharwar,
The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. of 1944.

Copy forwarded for information and guidance to

22-1-45

Submitted after issue
2 File in a new suit file
gw. 23/1 P.A. 24/1

New
S. Asst. 24/1/45

1/45

DHARWAR CIVIL SUITS NOS. 1 AND 2 OF 1944.

Chronological Statement of Facts.

1. These two suits are filed respectively by Madhavrao Balkrishna Jakati and Venkatesh Bhimrao Desai who were respectively the Managing Director and the Director of the Dharwar Urban Co-operative Bank Ltd. The suits are for a declaration that the order passed by the Deputy Registrar, Co-operative Societies, on 21st April 1942 in case No. MSF 1 of 1940 under section 50A of the Bombay Co-operative Societies Act, 1925, and confirmed in appeal by Government on 3rd November 1942, holding the plaintiffs in both the suits liable in certain sums to the Liquidator of the Bank for alleged misfeasance and breach of trust on their part, is illegal and *ultra vires*, and for costs and other reliefs.

2. The Dharwar Urban Co-operative Bank Ltd. was a Co-operative credit bank registered under the Bombay Co-operative Societies Act, 1925, and doing the business of moneylending, in the City of Dharwar. M. B. Jakati, the plaintiff in Suit No. 1 of 1944, was the Managing Director of the Bank from 1923 to 1932. V. B. Desai, the plaintiff in Suit No. 2 of 1944, was its Director from about the year 1928. On 27th January 1940 the said bank was ordered to be wound up by the Registrar, Co-operative Societies, and since then it has been under liquidation.

3. The Bank's Liquidator then applied to the Registrar, Co-operative Societies, under section 50A of the Bombay Co-operative Societies Act, to investigate into 21 cases of misfeasance and breach of trust on the part of the plaintiffs and other directors of the bank and order recovery of compensation from them for losses caused to the bank on account of their misfeasance and breach of trust.

4. On 19th May 1941 the Registrar ordered the Deputy Registrar to dispose of these cases.

5. The Deputy Registrar to whom the powers under section 50A had been delegated by Government Notification, Revenue Department, No. 522/28 (*a*), dated 31st July 1939, investigated into twenty cases and after issuing notices to the plaintiffs and other directors concerned, and after giving them full opportunity to plead their case, he passed an order on 21st April 1942 holding them liable for the loss caused to the bank on account of their misfeasance and breach of trust and calling upon the plaintiff M. B. Jakati to pay Rs. 15,100 and plaintiff V. B. Desai to pay Rs. 1,500 to the Liquidator. The other directors were also called upon to pay different amounts.

File 1, p. 86.

6. The plaintiffs preferred an appeal to Government but it was rejected (see Government letter, Revenue Department, No. 2324-H/39, dated 3rd November 1942).

File 2, p. 53.

7. On 18th July 1942 the Liquidator forwarded through the Assistant Registrar the order, dated 21st April 1942, passed by the Deputy Registrar to the Collector of Dharwar, with a request to recover the amounts of Rs. 15,100 and Rs. 1,500 by distraint and sale of the plaintiffs' properties and in the event of a deficit from the plaintiffs personally, under section 59 (*1*) (*b*) of the Bombay Co-operative Societies Act, 1925.

8. On 2nd February 1943, C. T. S. No. 36/D belonging to plaintiff M. B. Jakati was sold for Rs. 13,025 by the Special Recovery Officer, Hubli, and purchased by one S. M. Borker. On 28th June 1943 the sale was confirmed by the Assistant Collector. Plaintiff's appeals to the Collector and the Commissioner against the order confirming the sale were rejected on 22nd September 1943 and 17th January 1944.

File 2, pp. 55 to 65 and 93.

Do. pp. 419 and 459.

9. The property of the plaintiff V. B. Desai was proclaimed for sale on 30th August 1943 and the sale was fixed on 2nd November 1943. On 19th October 1943 he applied to the Assistant Collector for stay of the sale and for time to enable him to pay the dues. On 26th October 1943, the Collector ordered the sale to be stayed provided plaintiff paid Rs. 300. On 2nd November 1943 the sale was stayed on plaintiff having paid Rs. 300. On 13th August 1943 the plaintiff gave a notice to the Registrar asking for permission under section 51 to start litigation in connection with the Deputy Registrar's

File 3, p. 85.

Do. p. 87.

Do. p. 92.

Do. p. 93.

order, dated 21st April 1942. The Registrar replied on 28th August 1943 that as the order was passed by the Deputy Registrar under section 50A and not by the Liquidator, the latter could not be made a party to the suit and that therefore the question of granting leave under section 51 did not arise.

10. On 25th October 1943 the plaintiff M. B. Jakati gave notice of the suit under section 80 of the Civil Procedur Code and on 3rd January 1944 he filed Suit No. 1 of 1944 in the Court of the First Class Subordinate Judge, Dharwar. On the same day V. B. Desai also filed Suit No. 2 of 1944.

DHARWAR CIVIL SUIT NO. 1 OF 1944

Grounds of Defence.

1. *Jurisdiction.*—Under section 51 of the Bombay Co-operative Societies Act, 1925, no Civil Court can take cognizance of any matter connected with the winding up or dissolution of a society under that Act. In this case the Dharwar Urban Co-operative Bank was ordered to be wound up on ~~[21st April 1942.]~~ In the course of the winding up proceedings the Liquidator applied to the Registrar to investigate into the cases of misfeasance and breach of trust against plaintiff and other directors under section 50A of the Act. The Deputy Registrar to whom the powers under section 50A were delegated by Government Notification, Revenue Department, No. 522/28 (*a*), dated 31st July 1939, passed an order on 21st April 1942, holding the directors liable for the alleged acts of misfeasance and breach of trust and ordering them to pay to the Liquidator certain sums by way of compensation for the loss caused to the bank. The order was passed in the course of winding up and it is evidently a matter connected with the winding up or dissolution of the Bank. Under section 51 of the Act therefore, the Civil Court has no jurisdiction to take cognizance of this matter. In *Ganpat Ramrao* v. *Krishnadas* (22 Bom. L.R. 732) which was a case under section 42 of the Co-operative Societies Act II of 1912, a Liquidator ordered the plaintiff to pay a certain sum for the price of articles found missing from one of the branches of a society. The plaintiff contended that the Liquidator had no authority to pass the order. Section 42 (*b*) of the Act II of 1912 provided that no Civil Court shall have jurisdiction in respect of any matter connected with the dissolution of a registered society. It was held therefore that the jurisdiction of the Civil Court was entirely ousted and the Court could not deal with a matter connected with the dissolution of a society. Again, in *Mathura Prasad* v. *Sheobalak* (I.L.R. 40 All. 89) which was also a case under section 42 of the Act II of 1912, the Allahabad High Court observed "It is quite clear that the policy of the Act was that matters arising under the Act should be settled without litigation in the Courts. If litigation were permitted, the whole object of the Co-operative Societies Act would be defeated" (p. 92). The principle of these two rulings is applicable to the facts of the present case as well. As observed by Heaton J. in the Bombay case cited above, it is only if the Liquidators (or, as in this case, the Deputy Registrar's) act is shown to be clearly *ultra vires*, that is outside the powers conferred on him by law that the Civil Court can possibly intervene. It should further be urged that the Deputy Registrar's decision cannot be challenged as *ultra vires* even if it is wrong, for jurisdiction conferred cannot be taken as ousted by mistakes. This principle is well illustrated by the remarks of Lord Hobhouse in *Malkarjun* v. *Narhari* (I.L.R. 25 Bom. 337 at page 347): "A Court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right, and if that course is not taken, the decision, however wrong, cannot be disturbed". In the present case, if the plaintiff felt that the order of the Deputy Registrar was wrong his remedy was to apply to the Registrar to call for and examine the proceedings under section 64A of the Act of 1925. He cannot challenge the order in a Civil Court. It should therefore be urged that the Civil Court has no jurisdiction to entertain this suit.

✓ 29th January 1940

11 127

v 2nd February 1943

2. *Bar of section 42 of the Specific Relief Act.*—The plaintiff is not entitled to the declaration sought under the proviso of section 42 of the Specific Relief Act. In execution of the Deputy Registrar's order, dated 21st April 1942, the plaintiff's property was sold by the Special Recovery Officer on ~~2nd December 1943~~. Plaintiff's grievance should have been against the execution of that order. Unless that sale is set aside, it would be futile to grant to the plaintiff the declaratory relief which he seeks in this suit. Since the plaintiff has omitted to ask for the relief of setting aside the sale as a consequential relief, he is not entitled to the declaration sought in this suit. It should however be remembered that the section does not authorize the dismissal of the suit where further relief ought to be claimed but is not claimed. It only forbids the Court to make a declaration the prayer for which is not coupled with a prayer for consequential relief. It should therefore be urged that the Court cannot grant the prayer for declaration unless the plaint is amended by adding the prayer for the consequential relief of setting aside the sale held in execution of the Deputy Registrar's order (see *Sakharam* v. *Secretary of State*, I.L.R. 28 Bom. 232; *Kunj Behari Prasadji* v. *Keshavlal*, I.L.R. 28 Bom. 567; *Kalabhai* v. *Secretary of State*, I.L.R. 29 Bom. 19).

3. *Limitation.*—The suit is in effect a suit to set aside the Deputy Registrar's order, dated 21st April 1942, confirmed in appeal by Government on 3rd November 1942. It has been filed on 3rd January 1944. The Deputy Registrar passed the order in dispute in exercise of the powers under section 50A of the Bombay Co-operative Societies Act, which were delegated to him by Government Notification, Revenue Department, No. 522/28 (*a*), dated 31st July 1939. It is therefore valid and *intra vires* and plaintiff cannot get any relief unless it is set aside. Consequently the suit is governed by Article 14 of the Limitation Act and as it is filed after the period of limitation prescribed in that article it is time-barred. The fact that the plaintiff appealed to Government will not postpone the starting point of limitation which, under the third column of Article 14 is the date of the original order.

4. *Merits.*—The allegations made against the plaintiff and other directors of the Urban Bank by the Liquidator in his application to the Registrar were (*i*) that all or some of the directors were responsible for sanctioning loans to certain persons without proper inquiry, on the security of immoveable properties which were greatly overvalued and on personal security of persons who were not credit worthy; (*ii*) that the loans were advanced in contravention of the provisions of certain by-laws of the Bank and without due regard to the interests of the Bank resulting in loss to the Bank by way of bad debts; and (*iii*) that thereby the plaintiff and the other directors committed acts of misfeasance or breach of trust punishable under section 50A of the Bombay Co-operative Societies Act, 1925. These allegations were found proved by the Deputy Registrar who held the plaintiff liable in the sum of Rs. 15,100 as loss caused to the Bank in respect of these loans as detailed below:—

	Name of borrower.	Amount.	Date of application.	Date of sanction.	Date of advance.	Plaintiff's liability.
		Rs.				Rs.
1.	S. S. Indur ..	5,000	21st September 1925.	24th September 1925.	10th October 1925 ..	3,000
2.	V. R. Neglur ..	1,500	2nd September 1927.	27th September 1927.	9th November 1927 ..	1,000
3.	B. R. Patil ..	5,000	15th October 1927..	29th October 1927..	3rd November 1927.	5,000
4.	A. H. Khalasi ..	1,500	15th March 1928 ...	31st March 1928 ..	11th April 1928 ..	2,900
5.	B. C. Mantri ..	5,000	1st January 1929 ..	24th June 1929 ..	5th March 1930 ..	1,500
6.	R. K. Yeri ..	1,600	26th June 1930 ..	28th June 1930 ..	21st August 1930 ..	1,700

5. Each of these cases was separately examined in detail by the Deputy Registrar who held that these losses were due to misfeasance and breach of trust on the part of the plaintiff. He held further that the plaintiff who was the Managing Director of the Bank had failed in his duties to examine and check the accounts and to exercise general supervision over the office staff in exacting the work of the society, i.e., the Bank; that if the Managing Director had performed these duties satisfactorily and given his vote for sanction or rejection of loans conscientiously and on the basis of his knowledge resulting from such performance of duties, several of the bad debts could have been avoided. In a detailed and well-considered report the Deputy Registrar has stated his reasons for arriving at this conclusion and reliance should in general be placed on that report.

6. The several contentions which the plaintiff has raised in the plaint may now be examined in detail. It is alleged at the end of paragraph 6 of the plaint that the Deputy Registar was incompetent to hold the inquiry as he and the Registrar were unduly and unnecessarily prejudiced against the plaintiff. This personal allegation against the officers concerned is utterly baseless and unsupported by any evidence and should therefore be denied. It is intended to create unnecessary prejudice against the officers. There is no reason why they should have been prejudiced against the plaintiff.

7. It is next contended that the inquiry held by the Deputy Registrar was illegal as it was not conducted according to proper procedure and after giving due notice to the plaintiff about the charges he had to meet. This contention is incorrect. Neither the Bombay Co-operative Societies Act, 1925, nor the rules framed thereunder prescribe any special procedure to be followed in inquiries under section 50A of the Act. In every case, a notice was served on the plaintiff requiring him to state in writing why he should not be ordered to contribute to the assets of the Bank by way of compensation for the loss caused to it although there is no provision for such notice either in the Act or in the Rules. The plaintiff was also allowed to plead his case through a pleader. All the directors were further allowed to submit their written statements in consultation with one another. It will be seen from paragraphs 3, 4 and 6 of the Deputy Registrar's report that every facility and opportunity has been given to the plaintiff and the other directors to plead their case in the best light and there is therefore no force in the contention that the procedure followed was illegal.

8. It is next alleged that the inquiry was illegal as the heirs of the deceased directors were not made parties to it. This contention is misconceived. Section 50A empowers the Registrar to examine into the conduct of any person who has been guilty of misfeasance or breach of trust in relation to society. It does not provide for action being taken against the heirs of deceased directors nor is it necessary to make such heirs parties to the proceedings as the plaintiff appears to assume. Besides, the plaintiff has been ordered to contribute only for such losses as were caused to the bank by his own misfeasance and breach of trust in respect of those loans.

9. The next contention is that the inquiry was held a very long time after the said loan transactions when the alleged losses could not be said to be the result of misfeasance and breach of trust. This contention is also misleading for the simple reason that action under section 50A of the Bombay Co-operative Societies Act, 1925, is to be taken only during the winding up proceedings. The bank was ordered to be wound up in 1940 and these proceedings started soon after the liquidator had made application in that behalf to the Registrar. Moreover no particular time limit has been prescribed in the Act or Rules within which such proceedings should be taken.

10. The next point urged is that the Deputy Registrar did not properly understand the meaning of " misfeasance " and " breach of trust ". Now " misfeasance ' means a breach of duty resulting in loss to the company [*Bentinck* v. *Fenn.* (1887) 12 App. Cas. 652]. It means all kinds of misconduct, delinquency and breach of duty on the part of the directors resulting in actual loss to the company. The term " breach of trust " is used in this section in a more restricted sense in a case where following the breach of duty, there has been a misapplication of the funds of the society. (see Indian Company Law by R. K. Soonawala, page 281). In the present case the charges levelled against the plaintiff included sanctioning loans without proper inquiry, on the security of overvalued properties and on personal securities of persons who were not credit worthy, granting of loans in contravention of the bye-laws of the Bank and so on. All these charges were found proved against the plaintiff and the Deputy Registrar has further found that the losses were caused to the Bank by the dereliction of duty on the part of the plaintiff and the other directors. In these circumstances it is futile to suggest that the Deputy Registrar did not understand the meaning of these terms.

11. The next point is that the Deputy Registrar ignored the existence of loan rules framed by the General Body to regulate the conduct of the directors in lending money to debtors. This is also incorrect. There were no such " loan rules " as alleged by the plaintiff except the bye-laws which the Deputy Registrar has carefully considered.

12. It is next urged that all these moneylending transactions were examined by special Auditors appointed by the Registrar in 1931 and also by a special committee appointed by the General Body and hence the Deputy Registrar ought to have held that the plaintiff and the other directors were not liable for any loss caused to the Bank. In reply, it should be urged that neither the special Auditors nor the special Committee were appointed to deal with these individual cases, nor they have specifically examined those cases and held them to be good debts. The reports of the special committee and the special Auditors have no bearing on those particular cases of bad debts. Reliance should also be placed on the remarks in paragraph 5 at pages 11 and 12 of the Deputy Registrar's ~~[report]~~ order.

13. It is next contended that as the remedies against the debtors and their sureties have not been exhausted it is incorrect to say that any loss has been caused to the Bank. This is also incorrect because in ascertaining the losses caused to the Bank the Deputy Registrar has taken into consideration the estimated future recovery from the debtors and their sureties (see in this connection paragraph 6, pages 12-13 of the Deputy Registrar's [report] order

14. The plaintiff next contends that as he was not a paid officer of the Bank, his responsibility as a Managing Director was not greater than the ordinary director, that it was not his duty to scrutinize the sufficiency of the securities, that the duty to make inquiry about the solvency of the sureties was on the Secretary and the plaintiff cannot therefore be made to contribute more than the other directors. The plaintiff admits in the plaint that he had more work to do in supervising the affairs of the bank and he was therefore allowed an honorarium at the annual general meetings. The Deputy Registrar has referred to a resolution of the general board, dated 14th May 1923, by which the several powers and duties of Managing Committee specified therein were delegated to the Managing Director (page 17 of the Report). Then at page 17 of the ~~Report~~ the Deputy Registrar observes as follows :—

order

" It is true that the resolution does not make any mention of sanction of loans on security other than that of deposits of members and ornaments and jewels and Government promissory notes and valuable securities mentioned in the

Indian Trust Act. But the said resolution does delegate to the Managing Director some of the most important powers of the Managing Committee such as general control over office staff in exacting the work of the bank, examining and checking accounts, preparing the annual balance sheets, taking action in respect of arrears of dues of the bank, etc. It was the duty of the Managing Director to see that the work of the bank was properly carried on by the staff of the bank and the cases for sanction of loans were properly inquired into, examined and scrutinised by the staff, before they were placed for consideration of the committee of directors." Further on, the Deputy Registrar after remarking that the Managing Director had failed in his aforesaid duties to examine and check accounts and to exercise general supervision over the staff observes as follows: "Ordinary directors would be justified in assuming in the ordinary circumstances that the Managing Director had performed the duties assigned to him by the committee of directors satisfactorily and used the knowledge resulting therefrom conscientiously, and that therefore, the Managing Director's vote had great value in regard to dependability and had great responsibility." The Deputy Registrar has thus given very convincing reasons for holding that the plaintiff's responsibility as a Managing Director was greater than that of the ordinary directors and plaintiff's contentions to the contrary are untenable.

15. The next point urged by the plaintiff is that the Deputy Registrar ignored the fact that the prices of immoveable property went down after 1930 and that, therefore, if the value of the securities declined the plaintiff and the other directors cannot be held responsible for the loss. This argument is also without substance. On the contrary the Deputy Registrar has shown very clearly in his ~~report~~ order dealing with the six items mentioned above that the plaintiff had advanced those loans on overvalued or insufficient securities and without regard to the repaying capacity of the principle debtor.

16. Finally the plaintiff urges that no loss has been proved to have been caused to the Bank in respect of these six transactions, that the Deputy Registrar has erred in holding the plaintiff liable for Rs. 15,100 and that the loss was not caused through any misfeasance or breach of trust on the part of the plaintiff. This contention is also futile. In his treatment of each individual item of bad debt and resulting loss the Deputy Registrar has considered the following points with respect to each item before holding the plaintiff and the other directors guilty of misfeasance and breach of trust (see page 20):—

(*i*) Whether any loss has occurred to the bank in respect of the loan ?

(*ii*) If any loss has occurred, what is the amount of the loss ?

(*iii*) Whether such loss is due to misfeasance or breach of trust on the part of one or more of the directors while recommending or voting for the loan ?

(*iv*) If the decision on (*iii*) were in the affirmative, what sum, if any, should any or all of the opponents contribute to the assets of the Dharwar Urban Bank in liquidation, as compensation ?

On each of these points the Deputy Registrar has recorded his findings with reasons thereon against the plaintiff. It is unnecessary to repeat them here. Reliance should in this connection be placed on items Nos. 3, 7, 8, 15, 16 and 18 at pages 29, 43, 51, 68, 71 and 78 of the ~~Report.~~ order

17. On all the points, therefore, the plaintiff's contentions fail and it should be urged that the suit be dismissed with costs.

15 131

DHARWAR CIVIL SUIT NO. 2 OF 1944.

Grounds of Defence.

Besides the grounds of defence in Civil Suit No. 1 of 1944 (except ground No. 3), the following additional points should also be urged in this suit :—

File III, p. 95.

1. *Notice.*—In paragraph 18 of the plaint, it is alleged that proper notice has been given to defendant No. 1 of the filing of this suit under Civil Procedure Code. It further appears that the Collector has by his letter No. L.A.W./442, dated the 5th November 1943, addressed to the plaintiff, acknowledged receipt of a notice purporting to be a notice under section 80 of the Civil Procedure Code. On the other hand, in the Collector's report under rule 118 of the Law Officers Rules, it is reported that no notice under section 80 has been given. The averment to that effect in the plaint (paragraph 18) has been stated to be incorrect in the marginal notes made by the Collector in the English translation of the plaint accompanying the report. In the chronological statement of facts and the grounds of defence also it has been alleged that no notice has been given under section 80. In view of these conflicting statements in the record, the District Government Pleader should ascertain from the Collector whether notice under section 80 has been given or not. If no notice is given the omission is fatal to the suit which is against Government and the Registrar who is a public Officer. If any such notice is found to have been delivered the District Government Pleader should obtain and scrutinise it and see whether it fulfils the express and mandatory provisions of section 80 of the Code. If it does not, the plaint deserves to be rejected under Order VII, rule 11 of the Code.

2. In paragraph 12 of the plaint it is contended that the decision of the Deputy Registrar charging the plaintiff with special liability because in some cases he was asked to report

as ward director is illegal and *ultra vires*. This plaintiff has been ordered by the Deputy Registrar to contribute Rs. 1,500 to the loss arising out of a loan of Rs. 5,000 advanced to B. C. Mantri. The loan appears to have been advanced on the security of property which was already under a mortgage encumbrance of Rs. 3,000, yet this fact was not disclosed in the office notes, accompanying the loan application. As to this the Deputy Registrar remarks at page 80 of the [Report] order.

> "It may be that the staff including the Manager did not want to show it; or it may be that the managing director and the ward director (plaintiff) had also the same intention. In any case before recommending the loan on mortgage the ward director should have called for and seen the extract of the Record of Rights. If he saw it and recommended the loan, he must be taken to have acted in a manner prejudicial to the bank as there would not be adequate security for the loan in the form of immoveable property. If he did not, he must be considered to be grossly negligent."

These remarks are sufficient to dispose of the contention that the plaintiff has no special liability even though he was a ward director.

3. In all other respects this should be defended on the grounds of defence urged in Suit No. 1 of 1944

This relates to Sharwar Coml Suit No 19 of 1944. In his letter dated 13-2-1945 the Deputy Registrar, Cooperative Societies points out certain inaccuracies in the printed brief at pp. 125-131 of the File

1. The first is about the number of the Government letter referred to in paragraph 6 of the C.S.J. The number is correct- except that letter H should have been printed in place of the figures 1-1. This might probably have been due to the fact that the typist mistook H for 1-1 in the manuscript.

2. In line 6 of para 1 of the grounds of defence it is stated that the Sharwar Central Cooperative Bank was ordered to be wound up on 21st April 1942. The date should be 27th January 1940. The correct date is stated elsewhere in the brief. (para 2 C.S.J. and para 9 grounds of defence). 21st April 1942 is in fact the date on which the Deputy Registrar passed the order under section 50 A of the Bom. Cooperative Societies Act. (para 1 and 5 C.S.J.). Through some oversight these two dates were confused in para 1 of the grounds of defence although every care was taken to revise the brief.

3. There is no mistake here. 22 Bom. L.R. 732 is the same as I.L.R. 44 Bom 548. It is not necessary to make this correction

4. In para 2 of the grounds of defence it is stated that the plaintiff's property was sold on 2nd December 1943. It should be read 2nd February 1943. The correct date is stated in para 8 of C.S.J.

5. The defence registrar says that instead of the word 'report' the word 'judgment' or "Statement of Reasons ..." may be substituted. This correction is not very material and not even appropriate. With the exception of the few places pointed out by the defence Registrar, reference has been made throughout the brief to the "Order" of the Control Registrar. The word "order" may be substituted for the word 'report' wherever it occurs.

I regret the mistakes about the two dates. The brief was however a long one and we feel were many and I kept myself to do all comparison of the typed copies with the manuscript in the absence of any system of comparison in the office. Every care will be taken to avoid this in the future.

RMS
7/3.

A.A.L.R.

The main point seems to be about the dates. I think that some provision should be made whereby typed copies would be compared by a member of the staff with the PA's or AA's draft. To have to draft a long brief, then to check up a copy prepared ~~as typed~~ in accordance with Corrections made by AALR or RLA, & then again to check up Press proofs is rather like some mechanical work to which PA & AA cannot give full attention, in view of more important & urgent work that might be pending. It is unfortunate that the mistakes have occurred, & I think that if we could have typed copies checked up as drawn up checked up in Court, it would be a great help. As matters stand, I myself too have to read through every word of every copy passing through me & find it very tiresome

RLA

For marking

Date mistakes should not occur, but in view of the fact that corrections and more care should be exercised in checking typed copies. This obviously is the duty of the person responsible for the original draft to check the typed copy.

Ans 7/7/45

7/3/45

147-1/

[illegible]

In the Court of the Civil Judge, Senior Division at Dharwar.

Long cause suit No. 2 of 1944. Ex. No.

Plaintiff : Venkatrao Sheemarao Desai, age 42, Residence Detdoor Taluka Kundgol Jamkhandi State.

Versus.

Defendant : 1. Provincial Government of Bombay.

2. Registrar Co Operative Societies, Bombay Province, Poona.

Claim Rs. 200/- for all.

The plaintiff begs to state as follows:-

(1). The plaintiff was one of the directors of the Dharwar Urban Co-Operative Bank Ltd. now under Liquidation from about the year 1928.

(2). In the year 1939 when the said Bank was under liquidation on the representation of the Liquidator the Deputy Registrar was appointed to inquire into about 20 cases of money lending business done by the Bank and the Deputy Registrar after making inquiry held the plaintiff liable to contribute Rs. 1500 to the funds of the said Bank under Section 50 of the Co-Operative Credit Societies Act. The said order was passed on 21-4-1942.

Details of the case in which he was found liable is :-

No.	Name of borrower	Amount of loan	Date of loan.	Amount.
1.	S.S.Mantri	Rs. 5000/-	24-6-1929	Plff was directed to pay Rs. 1500/-.

(3). The said order being unjustified and illegal and ultra vires, this plaintiff appealed to Government of Bombay

against the said order of Deputy Registrar but the Government dismissed the said appeal on 3-11-1942 without giving any opportunity to the plff to prove that the judgment was wrong and illegal.

(4). The said order of the Deputy Registrar dated 21-4-1942 confirmed by the Government is ultra vires a nullity and opposed to law and equity.

(5). The Registrar and Deputy Registrar were disqualified to enquire into these matters as the Liquidator was wrking under them.

(6). The said order of the Deputy Registrar is illegal and ultra vires for the following amongst other reasons :-

(7). That the said inquiry is vitiated by the fact that the inquiry has taken place after a long time when some of the directors were dead who could have thrown light.

(8). That the inquiry is illegal as the heirs of the deceased directors were not brought on record.

(9). That the inquiry was illegal as all these loans were considered by special auditors and a special committee appointed by the General Body and found to be satisfactory.

(10). That no case of misfeasance or breach of trust has been made out against this plaintiff.

(11). The said order is illegal in as much as it never considered the loan rules authorised by the General body.

(12). That the decision of the Deputy Registrar charging the plaintiff with special liability because in some cases he was asked to report as to add - director is illegal and ultra vires.

(13). That the plaintiff has done his duty bona fide and to the best of his ability.

(14). No loss has been caused to the said bank on account of the conduct of this plaintiff.

(15). The decision is passed ignoring the rules and bye-laws of the Society.

(16). Hence for these amongst other reasons being aggrieved he has been obliged to file this suit.

(17). Cause of action arose on 3-11-1942 when Government dismissed his appeal.

(18). Proper notice has been given to defendant 1 of the filing of this suit under Civil Procedure Code.

(19). This Court has jurisdiction to hear this suit as the inquiry and the order concerned a Bank existing in this jurisdiction.

(20). Court-fee is paid on the following valuation.

As the prayer is for a declaration that the order dated 21-4-1942 confirmed by Government on 3-11-1942 is ultra vires, nullity and hence they be set aside. Court-fee is paid accordingly on Rs. 200/-. The value for jurisdiction is the same.

(21). The plaintiff prays :-

(i). for a declaration that the order of the Deputy Registrar and the confirming order of Government are ultra vires and illegal and inequitable as the acts and conduct of the plaintiff do not come within the perview of section 50 A of the Co-Operative Societies Act for grounds set forth above.

(ii) Costs be allowed from the defendants.

(iii) for any other relief due under the circumstances of the case.

(iv) that permission be given to amend the plaint if necessary.

This suit coming on this day for final disposal before Mr. M.S.Pagali, Senior Civil Judge, Senior Division, Sholapur in the presence of Mr. G.N. Idenur pleader for plaintiff and Mr. Kalapur of defendant No. 1 and Rao Bahadur Wakar for deft 2 it is hereby decreed that:-the suit dismissed with costs. Plaintiff to pay the costs of the defendants. Pleaders fees to be calculated on Rs. 1500/-.

Bill of costs.

Plaintiff.		Defendant No. 1.		Defendant No.2.	
Stamp for plaint	18-10-0			Stamp for vakalat	0-10-0
Do. for vakalat	0-10-0				
3. Do. for applns. Exs. 12. 27.	1-4-0	Stamp for applns. Exs. 7-11-15.16 17. 21. 29	4-6-0	Do for applns Exs. 3.	0-10-
Process fees	7-0-0				
5. Pleaders fee on Rs. 1500.	75-0-0	Pleaders fee on 1500	75-0-0	Pleaders fees on 1500	75-0-0
	102-10-0		79-6-0		76-4-0

Costs disallowed.		Costs disalowed.		Costs disallowe	
On applications Exs. 11 and 17	1-4-0	on applications 7-1-15-16-17.21 and 19	4-6-0	On applications Ex. 23.	0-10-(
Total.	101-6-0		75-0-0		75-10-0

Given under my hand and the seal of the Court this

31st July 1946.

Karkun.

Civil Judge Senior Divisi
Dharwar.

Plff's pleader :

Defendant No. 1's pleader:

Defendant No. 2's pleader.

Decree 35 23 1/15

In the Court of the Civil Judge Senior Division, Dharwar.

Long Cause Suit No. 1/44.

Plaintiff:- Mahdvarao Balakrishnarao Jakati, Caste Brahmin, age about 53, Occupation Nil, residence Shukrawar Peth, Dharwar.

versus.

Defendants:- 1. The Provincial Government of Bombay.

2. The Registrar Co-Operative Societies, Bombay Province, Poona.

Suit filed on 3-1-1944.

Claim Rs.200/- for all.

The plaintiff begs to state as follows:-

1. There was a co-operative-Credit Bank called "The Urban Co-Operative Bank Ltd. registered under the Co-operative Credit Societies Act and doing business within the city of & Dharwar". The Bank did money lending business. Plff. was the managing Director of the said Bank from 19 3 to 1932. Since & 1939 the said Co-Operative Bank has come into -- liquidation.

Government appointed the Deputy Registrar of Co-operative Socieities to inquire into about 20 cases which according to the liquidator and the Registrar required investigation under Section 50A6 of the Co-Operative Socieites Act as to whether loss had been caused to the said Bank by the conduct of the plaintiff and other directors of the said Bank and if so what amount they should be called upon to pay & to the said Bank.

The said Deputy Registrar held an inquiry into the said twenty cases and passed an order dated 21-4-194 directing that plaintiff should contribute Rs.15100/- to the funds of the said Urban Bank for his alleged responsibility in the matter of advancing the following & loans.

1.	2	3	4	5
Serial No.	Name of borrower.	Amount of loan.	date of loan.	Amount.
1.	S.S.Indur.	Rs.5000/-	24-9-1925	Plff. was directed to pay.

2.	V.R.Neglur	Rs15000/-	3-9-1927	Rs.3000/-, 2000/- Rs.1000/-
3.	R.R.Patil	Rs.5000/-	15-10-1927	Rs.5000/-
4.	A.H.Khalasi	Rs.15000/-	31-3-1928	Rs.2900/-
5.	B.C.Mantri	Rs.5000/-	24-6-1929.	Rs 1500/-
6.	R.K.Yuri	Rs.1000/-	26-6-1930.	Rs. 1700/-.
			Total	Rs 15,100/-.

The plaintiff filed an appeal to the Provincial Government against the said order of the Deputy Registrar which was summarily rejected without giving an opportunity to the plaintiff to support his appeal.

The plaintiff being aggrieved by the illegal order of the Deputy Registrar in calling upon the plaintiff to contribute Rs.15100/- which was confirmed by the first defendant has filed this suit.

The said order was illegal and ultra vires for the following amongst other reasons. The Deputy Registrar has held the plaintiff liable to contribute Rs.15100/- to the funds of the said Bank on the ground that this loss has been caused on account of the mis. feasance and breach of trust of plaintiff as Managing Director. The said order is illegal and ultra vires for the following amongst other reasons. He was also incompetent to hold the inquiry as he and the Registrar were unduly and unnecessarily prejudiced against the plaintiff:-

1). The enquiry itself was illegal as it was not conducted according to proper procedure and after giving due notice to the plaintiff about the changes he had to meet.

1A. It was also illegal as the heirs of the deceased Director were not made parties to the enquiry.

2. That the inquiry and the said order are illegal in as much as the inquiry was held a very long time after the said transactions when the alleged losses could not be said to be theresult of misfeasance and breach of trust.

3. That the Deputy Registrar has not properly understood the meaning of misfeasance and breach of trust.

4. That the Deputy Registrar has ignored theexistence of loan rules framed by the General body to regulate the conduct of the Directors in lending money to debtors.

37. 111

(5). He ought to have held that the said loans were advanced in accordance with thesaid loan-rules.

(6). That the Deputy Registrar has ignored the point that all these money lending transactions were examined by Special --- Auditors appointed b the Registrar in 1931 and by also a Special Committee appointing the General body and hence he ought to have held that the plaintiff and other directors were not liable for any loss caused.

(7). That the Deputy Registrar's decision in holdingthat there is loss to thesaid Bank from certain transactions, though the remedies existing against the said debtors have not been exhausted and the property has not been sold now is --- absolutely illegal. Hence his order is illegal and ultra vires.

(8). That the Deputy Registrar's order that it was the duty of the Managing directors to scrutenise as to whether the --- secutities are sufficient because he received remuneration from the Bank is perfectly wrong and illegal.

(9). That the plaintiff as Managing Director was not a paid -- officer of the bank. He was as much an Honarary worker as other directors. He had to do more work in supervising affairs of the bank and if he did his work satisfactorily, the General body used to allow him some Honararium at the Annual General meeting. From this it cannot be said he was a paid worker and hence greater responsibility about security &c. lay upon him,

(10). That the Deputy Registrar's order that the plaintiff as Managing Director was responsible to contribute more than the other Directors was illegal and ultra vires.

(11). That the Deputy Registrar has totally ignored the fact that the prices of immoveable property went down after 1930 and hence if the value of the securities went down on account of the general decline the plaintiff and the directors cannot be --- responsible for this loss.

(12). That the Deputy Registrar has ignored the fact that the duty to make enquiry about the solvency of the security lay on the Secretary according to rules and that a spedial Inspector was ~~appointed for the purpose and hence plaintiff as Managing~~ ~~Director was not responsible for the responsibility tha~~ d

appointed forthe purpose and hence plaintiff as Managing director had no greater responsibility than other directors. He has no other means of making inquiry than other directors.

13. That the Deputy Registrar has erred that in the said cases of 6 transactions, loss has been caused to the Bank and that ⅞ the said loss was caused on account of the misfeasance and breach of trust of plaintiff and other directors and that the plaintiff as the managing director should pay Rs.15100/- in all. The loss has not been proved to have been occured and it is not further proved that it was due to the misfeasance or breach of trust on the part of plaintiff. That he was liable to pay a bigger amount than other directors.

14. That the said order is vitiated by many other illegalities and the details will be proved later on.

14A. That the plaintiff has acted in all transactions bona - fide and according to rules. He is not guilty of misfeasance or breach trust.

15. That action of defendant 1 in rejecting the appeal without giving an opportunity to show that the order was wrong is illegal and ultra vires is illegal and hence the whole order is ultra vires.

16. For all these amongst other reasons, the Civil Court has jurisdiction to inquire into the legality of the order ofthe said Deputy Registrar confirmed by defendant 1.

17. The cause of action arose on 3rd Nov., 1942 when the deft. No.1 rejected the appeal summarily.

17A. This Court has jurisdictiom as the Bank is situated here and the transactions took place here.

(18). Due notice has been given to both the defendants.

19. The plaintiff has brought this suit for a declaration that the order passed by the Deputy Registrar and confirmed by defendant 1 is illegal and ultra vires and hence not binding on plaintiff

19A. The suit being one for declaration, court-fee is paid accordingly on Rs.200 only.

20. As the order of the said Deputy Registrar is on behalf of the Registrar, Registrar is made a party to the suit.

ST 27 179

The plaintiff prays for the following reliefs:-

2 (1). That the order of the said Deputy Registrar and -- confirmed by Government defendant 1 be declared to be illegal and ultra vires and hence not binding on plaintiff.

(2). That his costs be awarded.

(3). That any other relief due under the circumstances be awarded.

(4). That permission be granted for further amendment if necessary.

This suit coming on this day for final disposal before Mr.M.S.Bagali, Civil Judge, Senior Division, Dharwar in the presence of Messers.MR.Dehai Kulkarni pleader and G.B.Sidenur pleader for plaintiffand Mr.Malapur for defendant 1 and Rao Bahadur Pawkar for defendant No., it is hereby decreed that:

Suit dismissed with costs. Plaintiff to pay the costs of the defendants. Pleader's fees to be calculated on Rs.15100/-

Bill of Costs.

Plaintiff.		Debt No Bill of Costs		Debt No2.	
Stamp for plaint.	18-12-0	Stamp for appln. Ex. 7,10,11,12,13 and 14.	3-12-0.	Stamp for Vakalat	0-10-0.
2. do. for power. Vakalat	0-10-0.	Pleader's fee on Rs 15100/-	341-00.	do for appln. Ex 16.	0-10-0.
3 do for appln. Exs 20, 22, 27, 31, 36, 35, 39 40, 44, 33.	6-4-0.		344-12-0.	Pleader's fee	341-0-0.
Process fees.	13-00.	Costs disallowed on on appln. Exs. 7-10-11-12-13 & 14.	3-12-0	Total	342-4-0
5 pleader's fee on Rs 15100/-	341-00.	Total.	341-00.	Costs. disallowed on appln. Ex 16.	0-10-0
6. Witness potgi	2-0-0.			Total.	341-10-0.
Total.	381-10-0				
Costs. disallowed. on applns. Ex. 20, 22, 27 31, 33, 34, 35, 37, 40, 44	6-4-0				
	375-6-0.				

Given under my hand and Seal of the Court this 31st day of July 1945.

Sd/- M.S. Bagali
Civil Judge Senior Dn.
Dharwar

11-8-1945.

Suits: 29 189

Dharwar.

For a declaration that the order passed by the Deputy Registrar, Co-operative Societies, on 21st April 1942 in case No.MSF 1 of 1940 and confirmed in appeal by Government on 3rd November 1942, is illegal and ultra vires and for costs and other reliefs.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 492
Bombay Castle, 19th January 1946.

Read Government Resolution, Legal Department, No.7079, dated the 11th October 1944.

Letter from the District Government Pleader, Dharwar, No.344 dated the 3rd August 1945, stating that the suits noted in the margin were decided by the Civil Judge (Senior Judge), Dharwar, on 31st July 1945, when the following orders were passed :-

In the Court of the First Class Sub-Judge, Dharwar.
Civil Suit No. 1 of 1944.

Madhavrao Balkrishna Jakati .. .. Plaintiff;
Versus.
(1) The Provincial Government of Bombay.
(2) The Registrar, Co-operative Societies, Bombay Province, Poona. .. .. Defendants.

Claim- Rs.200.

Civil Suit No. 2 of 1944.

Venkatrao Bhimrao Desai .. .. Plaintiff;
Versus.
(1) The Provincial Government of Bombay.
(2) The Registrar, Co-operative Societies, Bombay Province, Poona. .. .. Defendants.

Claim- Rs. 200/-

"Suit dismissed with costs. Plaintiff to pay the costs of the defendant Pleaders fees to be calculated on Rs. ~~1500~~/-." and

"Suit dismissed with costs. Plaintiff to pay the costs of the defendants. Pleader's fees to be calculated on Rs. 15,100/-."

Letter from the District Government Pleader, Dharwar, No.600 dated the 22nd December 1945, forwarding uncertified copies of the judgments and decrees in the above suits.

RESOLUTION.- The result of the suits is recorded.

By order of the Governor of Bombay.

Original

R.M. MEHTA,
Assistant Secretary to Government.

To
The Revenue Department,
The Registrar of Co-operative Societies and Director of Rural Development, Poona,
The Commissioner, S.D.,
The Collector of Dharwar.

182

This may be filed in S. Dhoj Files
PR 19/1

Some 3/45

31 5 185

Civil Appeal No. 248 of 1945.

Received on 8-9-1945.

In the Court of the District Judge,

At Dharwar.

Appellant :- Venkatrao Bhimrao Desai of Betdur, taluka Kundgol in Jamkhandi State age 42, caste Brahmin, Agri.

Versus.

Respondents :- 1. Provincial Government of Bombay.

2. The Registrar Co-operative Societies, Bombay Presidency, Poona.

Claim Rs. 200/-.

The Appellant begs to appeal against the decree passed by the Civil Judge of the Senior Division in L. C. Civil Suit No. 2 of 1944 and sets forth the following grounds of objection to the decree appealed against.

1. That the judgment and decree are contrary to law and facts.

2. That the lower Court's judgment and decree are illegal inasmuch as they were passed without granting the Appellant an opportunity to produce his oral evidence in support of his case.

3. That the remark of the lower Court in the -- judgment delivered in L. C. Suit No. 1 of 1944 that 'as the important issues in both suits are issues of law -- and canbe disposed of without any oral evidence, I have exhibited the documents produced on benalf of both sides heard arguments of learned pleaders and I propose to -- record my findings upon theissues' are not justified by facts and against principles of law.

4. That only issues 2-3 and 5 were fixed as ----

preliminary issues and arguments heard thereon.

5. Issues 1 and 4 were not fixed for hearing at all on the date when arguments were heard on issues 2-3 and 5 only.

6. That the Appellant wanted to produce both oral and documentary evidence on issues 1 and 4.

7. The lower Court has recorded findings on issues 1 and 4 without allowing any opprtunity to the Appellant to produce his evidence both oral and documentary and without hearing arguments on these issues.

8. Arguments were adduced only issues 2-3 and 5 on the date of hearing fixed for preliminary hearing.

9. The most important issue being issue No. 4, finding is recorded without an opportunity to produce evidence and hearing arguments. The same is the case with issue No. 1.

10. It was a surprise to the Appellant when he found the whole suit disposed of after recording findings on all issues.

11. There has been failure of justice on account of this failure to grant any opportunity to adduce oral and documentary evidence on issues 1 and 4 and witnout hearing arguments on the said point.

12. Evidence both oral and documentary necessary for the disposal of the suit were excluded.

13. That the finding of the lower Court that suit fails on account of absence of proper notice is wrong and against law.

14. That the lower Court erred in holding that the Civil Court has no jurisdiction under Section 50A of the Co-operative Societies Act.

33159

15. That the finding that the order of the --- Deputy Registrar is not ultra vires for reasons --- mentioned in the plaint is also wrong.

16. That the principal judgment in L. C. Suit No. 1 of 1944 does not discuss the contentions raised by this plaintiff in his suit at all.

17. That the lower Court has notproperly understood the case of this Plaintiff.

18. The whole judgment is vitiated by the fact that issues 1 and 4 have been decided without giving any hearing at all as required by law.

19. Documentary evidence has not been properly understood.

20. Principles of law have not been properly understood and applied

21. The remarks of the lower Court that 'how--ever written arguments were put in by one Mr. C.D.G Gumaste pleader from Belgaum presumably on behalf of all the three persons named in Exn. 51 i.e., Messrs. M. B. Jakati, K.N.Nadgir and V. B. Desai' are in--correct and contrary to facts.

22. That the lower Court ought to have held that the refusal of Government to give a personal --- hearing was contrary to law and vitiates the order of the Deputy Registrar.

23. Other points mentioned in the plaint have not been considered at all.

For these amongst other reasons, the appellant prays that the decree of the Lower Court be set aside and the prayer of Plaintiff be granted or if the Court Court thinks necessary the suit be remanded for --

for recording oral evidence and for producing necessary -- documentary evidence and then decidi g the case on all points Costs be awarded.

Drafted and presented by

Dharwar, 8th Sept. 1945. Sd. G. B. Sidenur.

Pleader.

Appe lant is not a resident of British India. He should therefore, furnish security of Rs. 60/- within two weeks.

14-9-1945. Sd. B. K. Dalvi.

District Judge.

In view of the affidavit dated 18-9-1945, the Appellant is exempted from furnishing security-

18-9-1945. Sd. B. K. Dalvi.

District Judge.

55 187

Copy was applied for in person on (18th) eighteenth August 1945

Clerk of the Court.

Copy was ready for delivery on the (21st) twenty first August 1945

Clerk of the Court.

Copy was delivered (~~sent by post~~ in person) on the 30 (thirtieth) August 1945

Clerk of the Court.

Words 1150

21-9-0
5-6-0
0-5-0
27-4-0

Received on 3-1-1944
Registered on 5-1-1944
Decided on 31-7-1945
Duration 1 year, 6 months and 28 days.

In the Court of the Civil Judge, Senior Division,

At Dharwar.

L.C.Civil Suit No. 1 of 1944. Ex.61.

Pleaders,
Mr.Shidenur.

1. Madhavrao Balakrishnarao Jakati, of Dharwar, Brahmin, age 53, occupation Nil.

------- Plaintiff.

Against.

1. The Provincial Government of Bombay.
2. The Registrar Co-operative Societies, Bombay Province, Poona.

Mr.Malapur for 1 - 2

---------- Defendants.

Claim Rs.200/-.

The plff sues for a declaration that the order passed by the Deputy Registrar of Co-operative Societies on 21-4-1942 under Section 50 A of the Societies Act, directing the plff to contribute a sum of Rs.15,100/- towards the assets of the Urban Co-operative Bank Ltd., Dharwar and the subsequent order of the Government of Bombay confirming the said order were illegal and ultra vires and not binding upon the plff and to recover costs of suit from the defendants.

2. Plaintiff alleges in the plaint that he was the managing Director of the "Urban Co-operative Bank Ltd., "Dharwar from the years 1923 to 1932, that the Bank was carrying on money lending business and has come into liquidation since the year 1939

that the Government appointed the Deputy Registrar of co-operative societies to inquire into about 20 cases of loan applications which according to the liquidator and the Registrar required investigation under section 50 A of the Societies Act as to whether loss had been caused to the Bank by the conduct of the plff and the other directors of the Bank and if so what amount they should be called upon to pay to the said Bank ; that the Deputy Registrar held an inquiry into the said twenty cases and passed an order, dated 21-4-1942 directing the plaintiff to contribute a sum of Rs.15100/- to the funds of the Bank for his alleged responsibility in the matter of advancing the following loans .

Serial No.	Name of borrower	Amount of loan	Date of loan	Amount, plff is directed to pay
1	S.S.Indur	Rs.5000/-	24-9-25	R 000/-.
2.	V.R.Neglur	" 1500/-	3-9-27	1000/-.
3.	B.R.Patil	" 5000/-	15-10-27	" 5000/-.
4.	A.H.Khalasi	" 1500/-	31-3-28	2900/-.
5.	B.C.Mantri	" 5000/-	24-6-29	" 1500/-.
6.	R.K.Yeri	" 1000/-	26-6-30	" 170/-.
			Total ----	" 15,000/-.

2. The plff filed an appeal to the Provincial Government against the said order of the Deputy Registrar but it was summarily rejected without giving an opportunity to the plff to support his appeal, that the orders passed by the Deputy Registrar and the Government were illegal and ultra vires, that the plff was not guilty of any malfeasance or misfeasance of of breach of trust as Managing Director of the bank and that the Deputy Registrar was incompetent to hold the inquiry as he and the Registrar were unduly and unnecessarily prejudiced against the plaintiff.

3. Detailed reasons have been given in the plaint as to why and how the orders in question were illegal and ultra vires. I give below only the important ones.

(1) The inquiry was not conducted according to proper procedure ; due notice about the charges he had to meet was not given to

the plaintiff.

2. The Deputy Registrar's decision that loss has occasioned to the Bank from certain transactions was illegal when the remedies against the debtors have not been exhausted.

3. The Deputy Registrar, was wrong in holding that the plff - as the managing director of the Bank had to scrutinize the loan applications and to see that the securities were - sufficient and sound ; that was the duty of the Secretary under the rules. Plff was not a servant of the Bank but an honorary worker in receipt of honorarium.

4. The action of the Government in rejecting the plff's appeal - without giving him an opportunity to show that the order passed by the Deputy Registrar was illegal and ultra vires, was initself illegal.

The defendants in their W.statement Ex.17 contend that the suit was barred under Section 51 of the Bombay Co-operative - Societies Act 1925, that the plaint does not contain a proper averment of the delivery of notice under Section 80 of the C.P.Code and therefore it was liable to be rejected under order VII rule 11 of the said Code. that in execution of the order passed by the Deputy Registrar the special - Recovery Officer has sold the plff's property on 2nd December 1943, that under the circumstances of the case, the plff was bound to ask for the - relief of setting aside the sale as a consequential relief and in the absence of such a relief the suit was barred under Section 42 of the - Specific Relief Act, that the suit was barred under Article 14 of the - Limitation Act, that the Dharwar Urban Co-operative Bank was ordered to be wound up on 27th January 1940 that it was not in liquidation since - 1939 as alleged in para one of the plaint, that the order of the Deputy Registrar was legal and inter vires, that under Government notification Revenue Department No.522 of 1928, dated 31st July 1939 the powers to - hold inquiry into cases of alleged misfeasance and breach of trust - under Section 50 A of the Bombay Co-operative Societies Act, 1925 were - delegated to the Deputy Registrar that the inquiry held by him into the twenty cases of alleged misfeasance and breach of trust was in the -

exercise of the powers delegated to the Deputy Registrar and that - therefore the orders passed by him were intra vires and binding upon the plff.

4. The allegations made in the plaint that the Deputy Registrar and the Registrar were unduly and unnecessarily prejudiced against the plff are denied and it is stated that there was no reason why these officers should have been prejudiced against the plff. The allegations in the plaint that the inquiry was vitiated as it was not conducted according to proper procedure are denied and it is submitted that neither the Bombay Co-operative Societies Act, 1925 nor the rules framed thereunder prescribe any particular procedure to be followed - in inquiries under Section 50 A of the Act, that in each case, - however, the plff was served with a notice requiring him to state why he should not be ordered to contribute to the assets of the Bank by way of compensation, although there was no provision either - in the Act or in the rules for issuing such a notice, that the plff was allowed to plead his case through a pleader and to submit his Written statement before the Deputy Registrar, that every facility was given to the plff for his defence and that it was not a fact that he has been prejudiced in any way, that in ascertaining the losses caused to Bank by the plff's misfeasance, the Deputy Registrar has taken into consideration the estimated future recovery from the debtors and their sureties, that as the plff was the Managing Director in receipt of - substantial remuneration, his responsibility was greater than the - ordinary directors, that he was delegated with some of the most - important powers of the Managing Committee, that the Deputy Registrar had come to the conclusion that the plff failed in his duties as Managing Director to examine and check the accounts and exercise general supervisio over the staff and that consequently he was liable to contribute more than the other directors towards the losses caused to the bank, that the - Deputy Registrar has found that the plff had permitted the advance of - loans on exaggerated valuation of the securities and in disregard of the paying capacity of the debtors, that the Deputy Registrar has considered each individual item of bad debts separately and has found that loss was

was caused by the plff 's misfeasance and breach of trust, that his order directing the plff to pay Rs.15100/- was justified and legal, - that all the relevant papers were before the Government in the matter of the plff's appeal, that it was not necessary to hear the plff in - person , that the Government have carefully considered the plff's - case and rejected his appeal, that the plff was not entitled to the relief sought, that the suit should be dismissed and their costs - awarded.

5. On the above pleadings, the following issues were - framed at Ex. 23.

Issues.

1. Whether the plaint does not contain a proper averment of the delivery of notice as required by section 80 C.P.Code ; if so, is the plaint liable to be rejected under order VII rule 11 of the C.P.Code ?
2. Is the suit for a mere declaration barred under section 42 of the specific Relief Act as contended by the defendants in para 3 of their W.Statement ?
3. Is the suit barred by limitation under article 14 of the Indian Limitation Act ?
4. Is the jurisdiction of this court to entertain the suit barred under Section 51 of the Bombay Co-operative Societies Act 1925 ?
5. Was the order passed by the Deputy Registrar on 21-4-1942 , - illegal, ultra vires and invalid for all or any of the reasons mentioned in the plaint ?
6. What is or should have been the valuation of the suit for - purposes of jurisdiction and pleader's fees ?
7. What order should be passed ?

Findings.

1. It does not ; yes.
2. No.
3. No.
4. Yes
5. Not proved.
6. Rs,15,100/-.
7. As per final order

Reasons

6. This suit and L.C.S.No.2 of 1944 have been treated as companion suits and heard together. The points at issue

in both the suits are substantially the same. The plff in this suit was the Managing Director of the Dharwar Urban Bank, Ltd., now under liquidation and the plff in the other suit was an ordinary director. As the important - issues in both the suits are issues of law and can be disposed of without - any oral evidence, I have exhibited the documents produced on behalf of - both the sides, heard arguments of the learned pleaders and I proceed to - record my findings upon the issues

The first issue relates to the notice under Section 80 of the - C.P.Code. The defendants contend in para 2 of their W.Statement Ex.17 that the plaint does not contain a proper averment of the delivery of notice as required by section 80 of the C.P.Code. So far as this suit is concerned the delivery of the notices is not denied. There are two defendants to the suit. Defendant 1 is the Provincial Government of Bombay and the deft No.2 the Registrar of Co-operative Societies. The Government pleader appears for both the defendants, in both the suits. Exs.54 and 57 are postal acknowledgment receipts which go to show that the notices were sent to the Collector of - Dharwar, on behalf of the Government and to the Registrar of co-operative societies respectively through post. Both have acknowledged the receipt of the notices (Vide Exs.53 and 56). In the plaint, it is vaguely stated in para 18 that Due notice has been given to both the defts ', The plaint does not say under what provisions of the law the notices have been given.

7. Now, Section 80 of the C.P.Code provides that ' no suit - shall be instituted against the Crown or against a public officer in respect of any act purporting to be done by such public officer in his official - capacity until the expiration of two months next after notice in writing has been (delivered to or left at the office of)

(c) In the case of a suit against a Provincial Government, a secretary to that Government or the Collector of the District and

(e). in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name description and - place of residence of the plff and the relief which he claims ; and the - plaint shall contain a statement that <u>such notice has been so delivered or left</u> .

It is clear from the plaint that it does not contain -

a statement that the notices as required by section 80 of the C.P.Code i.e. stating the cause of action, the name description and place of residence of the plff and the relief which he claims (such notice) have been sent by registered post addressed to the Collector of Dharwar and the registrar of co-operative societies (i.e. the mode of service of notice). A mere - statement that due notice has been given to both the defendants, does not in my opinion comply with the provisions of Section 80 of the C.P.Code which - are mandatory. The Section is explicit and mandatory and admits of no - implications or exceptions. The language of this section is inoperative and absolutely debars a court from entertaining a suit instituted without - compliance with its provisions. If the provisions of the section are not - complieded with, the plaint must be rejected under Order 7 rule 11 (d) " - (Vide Mulla's C.P.Code , 1941 edition page 303). I therefore record my - finding in the affirmative on both parts of issue No. 1.

8. Now, coming to the plaint in L.C.S.No.2 of 1944 the - statement in the plaint reads as follows :- ' proper notice has been given to defendant 1 , of the filing of this suit under Civil Procedure Code '.The plaint does not speak of any notice given to the defendant No.2 i.e. the - Registrar of the Co-operative societies. As a matter of fact no notice - appears to have been given to him. The plff has not produced any documentary evidence to show that he gave notice to either of the defendants. Postal - acknowledgment receipts have not been produced . In para 2 of the W. Statement Ex.24 . The defts contend that " the suit is bad for want of notice under - Section 80 of the Civil Procedure Code. The plaint also does not contain a proper averment of the delivery of notice as required by that section. The plaint is therefore liable to be rejected under Order VII rule 11 of the Code". However, the Government pleader has produced the notice which the Collector - of Dharwar received from one Mr.V.R.Kothagi pleader Belgaum (Vide Ex.32).The notice is signed by one Mr.V.B.Desai i.e. the plff in L.C.S.No.2 of 1944 but it purports to have been given on behalf of Mr.M.B.Jakati pleader, Dharwar i.e. the plff in this suit. Even assuming that this notice was given on behalf of the plff in L.C.S.No.2 of 1944, it does not conform with the provisions of - Section 80 of the C.P.Code. It does not give the description and place of residence of the plff.The only information given about the plff is contained in the following words " V.B.Desai age, caste Occupation residence.

The blank spaces between the words mentioned above have not been filled in at all. It is not known who the V.B.Desai mentioned in the plaint was, - what place he belongs to and what occupation he followed. The notice, - therefore, does not comply with the provisions of Section 80 of the C.P. - Code which are mandatory. Further the section of the Civil procedure Code under which the notice was given has not been mentioned in the plaint. The mode in which the notice was served has not been stated. Further no notice at all has been given to the deft 2 and there is no averment in the plaint about any notice having been given to him. At least the suit is bad as - against the deft No.2 to whom notice was necessary to be given. I therefore hold that L.C.S.No.2 of 1944 was also untenable for want of notice to deft and for defective notice to deft 1.

(9) I now take up the most important issue in both the suits - viz the bar of Section 51 of the Bombay Co-operative Societies Act 1925. The Dharwar Urban Co-operative Bank was ordered to be wound upon 27th January - 1940 and a liquidator appointed under Section 47 of the Societies Act. In this connection sections 50 A and 51 of the Act are important and relevent. I give below the relevent portions from the said sections.

Section 50 A (1) where, in the course of the winding up of a society it appears that any person who has taken part in the organizati or management of the society or any post or present Chairman, Secretary, member of the Managing Committee or officer of the society has misapplied or retained or became liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar may, on the application of the liquidator or of any creditor or contributory, examine into the conduct of such person and make an order requiring him to repay or restor the money or property or any part thereof respectively with interest at such rate as the Registrar thinks just or to ~~contribute~~ contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retainer, misfeasance or breach of Trust as the Registrar thinks just

(10) Section 51 :- Save in so far as is expressly provided in this Act, no Civil Court shall take connizance of any matter connected

with the winding up or dissolution of Society under this Act and when a winding up order has been made, no suit or other legal proceeding - shall lie or be proceeded with against the Society except by leave of the Registrar and subject to such terms as he may impose.

11. The orders under Section 50 A have been passed by Mr.D.A.Shah, Deputy Registrar (Vide Ex.44) The inquiry has been made by him under the orders of the Registrar and upon applications made by the liquidator. The first objection taken to the inquiry held by the - Deputy Registrar and the orders passed by him is to the effect that he had no jurisdiction to hold the inquiry and pass the orders under .- Section 50 A of the Societies Act. This point was raised before the - Deputy Registrar and he has conclusively answered it in his order, dated 21-4-1942. Under Section 4 of Bombay Act VII of 1925, the Provincial - Government ' may appoint a person or persons to assist such Registrar, and and may by general or special order, confer on any such person or persons all or any of the powers of a Registrar under this Act'. Powers under - Section 50 A have been conferred upon the Deputy Registrar under - Government notification, Revenue Department, No.522/28(a), dated 31-7-39. It was therefore within the power of the Deputy Registrar to examine into the conduct of Ex-directors of the Bank and make an order under Section 50 A.

12. The order passed by the Deputy Registrar goes to show that all the directors, including the plff in these suits were given - full opportunity to arrange for their defence. They were even allowed - to engage pleaders and represent their points of view. I give below - extracts from the order of the Deputy Registrar " Notices were issued by the Deputy Registrar to all the opponents who were responsible for - granting loans to the persons mentioned in the schedule referred to heretofore. Time was allowed to them to submit their written statements and later, they were given an opportunity to be heard in person ". Then, the Deputy Registrar gives a summary of the contentions taken by the - Directors in their W.Statements. He then proceeds to say :- ' As the subject matter of the proceedings involved complicated questions of law and fact, pleaders were allowed to appear for explaining things on - behalf of these opponents who submitted applications requesting that -

pleaders may be allowed to appear on their behalf. Similarly, a pleader was allowed to appear for explaining things on behalf of the applicant - also (Vide Ex.44, pages 2 and 3).

13 . The plff has produced certain documents from which he wants the court to infer that he was not given adequate time to prepare - his defence Ex.52, dated 19th May 1941 is an order passed by the - Registrar, a copy of which was sent to the Registrar. The said order - reads as follows :- " The orders communicated in this office letter, - No.L.Q.D/2007, dated 15th May 1941, addressed to Mr.M.B.Jakati, granting him time upto 15th June 1941 for submission of written statement, are hereby cancelled and the Deputy Registrar C.S.Poona, is requested to dispose of the cases at a very early date ". From Exs.56, 59 and 60, produced by the plff himself, it appears that the above mentioned order of the Registrar referred to the inquiry in connection with debts other than those mentioned in the plaint and involved in this suit. Exs.56, 59 and 60 are - communications from the Deputy Registrar to the plff informing him that in view of the Registrar's order No. L.Q.D/2007, dated the 19th May 1941, he had fixed the hearing of the cases pertaining to the bad debts of - (1) Adiveppa Govindappa (2) R.B.Savdatti and (3) N.B.Kurhatti on the 26th 28th and 29th May respectively at Dharwar. None of these debtors as named in the plaint for whose debts the plff has been held liable to pay - compensation. The suggestion sought to be made from Ex.52 does not therefore arise, It would appear from the order of the Deputy Registrar that the - Liquidator made several applications from time to time asking the Registrar to take action under Section 50 A of the Societies Act (Vide page 1 of Ex.44) The plff has therefore failed to prove that he was not given sufficient time to arrange for his defence so far as the loans advanced to the debtors - mentioned in the plaint were concerned. Moreover, from the mere facts that the Registrar curtailed the time originally given to the plff to put his - written statement by a few days, it cannot be said that the plff was not - given adequate time. As a matter of fact the plff has put in his W.Statement. The cases of the six debtors for whose debts the plff has been held liable along with other directors, have been dealt with by the Deputy Registrar on pages 28, 42, 50, 67, 70 and 77 of his order (Vide Ex.44). The contention -

of the plff that he was not given due notice about the charges he was to meet is simply idle. The plff is a B.A.LL.B., a ~~lawyer~~ lawyer by profession. The order of the Deputy Registrar shows that the hearing was a protracted one and the Directors including the plff took all sorts of objections and defences to the charges levelled against them. These charges were simple - and explicit. They have been summarized on page 1 of the Deputy Registrar's order. They are :- ' sanctioning of loans to certain persons without - proper inquiry, on the security of immoveable properties which were - greatly over-valued and on personal security of persons who were not - credit -worthy, that the loans were advanced in contravention of the - provisions of certain bye-laws and without due regard to the interests of the bank, resulting in loss to the said bank by way of bad debts and that thereby, the ex-directors committed acts of mis-feasance or breach of - Turst punishable under Section 50 A of the Bombay Co-operative Societies - Act '.

(14) Another charge againt the inquiry made by the Deputy Registrar is that he has not followed the proper procedure. There is no particular procedure prescribed by the Societies Act or the rules made - thereunder for an inquiry under Section 50 A of the said Act. It was not - shown in what respects the procedure followed was defective. Notices were issued to the directors including the plff in both the suits to show - cause. These plffs especially, put in lengthy W.Statements. They were - heard in person and through their respective pleaders. The Deputy Registrar has considered all aspects of the case. He has considered the objections and contentions of the plff and other directors. He has written a very - careful, detailed and pains-taking order which runs into 85 typed pages . Under these circumstances, it is not understood what is meant by saying that proper procedure was not followed.

(15) Another complaint made by the plff is that his liability under Section 50 A does not arise unless the remedy against the debtors and their sureties is exhausted and that therefore the order was illegal and - ultra vires. This point was taken before the Deputy Registrar and he has replied to it in his order in the following words :- Whether a definite loss has or has not occured to the Bank is a matter of fact which has to

be decided by considering the facts of each case. If a certain surety has not been proceeded against, it can be considered whether there is any - possibility of anything being recovered from him and if the amount that can be recovered from him is not sufficient to extinguish the debt of the principal debtor, the amount after deducting the amount of the possible - recovery from the surety can be considered to be a loss to the Bank. - Similarly, if there is some property of the principal debtor or surety - transferred to and in the possession of the Bank, but not actually sold, the value of the property as may be decided in each case by taking into consideration the panch valuation, upset prices fixed by the Revenue - Department and sales etc. should be deducted from the amount of the unpaid dues of the bank and the balance can be treated as the amount of the loss that resulted to the Bank. My decision on this point, therefore, is that losses can be considered to have resulted to the bank for the purposes of these proceedings, ev en if certain properties are taken over by the - applicant (liquidator) and not sold as are to be taken over by the - applicant or some property on surety can be proceeded against " (Vide - page 12 of Ex.44).

(16) As a matter of fact, the Deputy Registrar has taken into consideration the fact that the principal debtor or his surety or sureties own some property which was available for the liquidation of the debts, - before assessing or fixing the amount of damages or compensation payable by the Directors of the Bank. There is no warrant in Section 50 A of the - Societies Act to wait till the liquidator exhausted exhausted his remedy against the persons of the principal debtors and their sureties or against their assets. The Deputy Registrar has rightly pointed out on page 11 of his order that the opponents - the Ex- directors of the Bank- had put forward long delay in hilding the inquiry as a ground for not holding them - responsible. They had even put forward the plea of limitation against - holding the inquiry. The Bank was wound up in January 1940 and the - liquidator took charge of the business of the Bank. Some time must have - elapsed between the date of his taking over charge and the dates of his - applications to the Registrar under Section 50 A of the Societies Act.

during which he examined the accounts and found out the real state of affairs. The applications appear to have been made early in 1941 ; for we find the Deputy Registrar fixing the date of hearing in May 1941 - (Vide Exs.56, 59 and 60). These applications could not have been made before the winding up order was made. So, it cannot therefore be said - that there was any undue delay in starting the proceedings under - Section 50 A of the Act, on the other hand, it was the plff and the - other directors who were trying to postpone the inquiry indefinitely - by asking the Deputy Registrar to wait till the liquidator exhausted - his remedy against the debtors and the sureties and their property, if any. The Deputy Registrar has found out a via media as mentioned - already. Further, if ultimately the liquidator succeeds in realizing more money than estimated, from the debtors and their sureties, the plf and the other directors will be at liberty to ask for a refund of the money or any portion of it, already recovered from them.

(17) There is one more point which concerns the plff in this suit only and it is this. The plff was the Managing Director of the Bank from 1923 to 1932 ; In that capacity he was in receipt of a ~~fast~~ fat salary or honorarium, call it by whatever name from the Bank. As such, he was invested with large powers of supervision and superintende over the staff and the business of the Bank and he was charged with - certain duties as well such as examining and checking the accounts, - preparing the annual balance sheet, inquiring into and taking action in case of arrears, etc. etc., For this reason, the Deputy Registrar ha come to the conclusion that the plff must bear a larger share of the - losses occasioned to the Bank by his own gross negligence in the - discharge of his duties and the frauds committed by the staff, than th other directors. He has given his reasons on pages 16 and 17 of - Ex.44 :- " when it is found that in a number of cases, there is - nothing to show that the properties were inspected by the bank - Inspector or by any other responsible person, when loan papers are put up to the Board even before the applicants are admitted as members, wh the same person such as V.P.Shivpooji - a mere bond writer - introduces a large number of applicants and stands surety for as large an amount a

of Rs.29,000/- although he himself had borrowed Rs.5000/- when office does not see what even the provisions of bye laws are complied with, it must - lead to the conclusion that the Managing Director failed in his duties - to examine and check the accounts and to exercise general supervision over the office staff in exacting the work of the bank. If the Managing Director had performed these duties satisfactorily, and given his vote for - sanction or rejection of loans conscientiously and on the basis of his - knowledge resulting from such performance of duties, several of the bad - debts to the bank could have been avoided. The office staff would also have been alert and more careful and honest in the discharge of their duties Ordinary directors would be justified in assuming in the ordinary - circumstances, that the Managing Director has performed the duties assigned to him by the Committee of Directors, satisfactorily and used the knolwedge delivered therefrom conscientiously, and that, therefore, the managing - director's vote had great value in regard to dependability and had great responsibility ". In my opinion, the Deputy Registrar was right in holding the plff liable for a larger share of the loss occasioned to the Bank by the conduct and the acts of commission and omission of the directors in general and the managing director in particular.

(10) In my opinion, there is no substance in the other grounds mentioned in the plaint. I have considered the most important ones. I now proceed to consider the bar of suit provided by Section 51 of the Societies Act. On this point, a large number of rulings have been cited on both the sides. I shall refer specifically to only some of them which in my view are both important and relevant. We have alread, noted that the - Deputy Registrar had full jurisdiction to hold an inquiry made under - Section 50 A of the Societies Act and pass an order thereunder. Juriadiction is power to hear and determine a case; it does not depend either upon the regularity of the exercise of that power or upon the correctness of the - decision pronounced ; for power to decide necessarily carried with it the - power to decide wrong as well as right. If it decides wrong, the wronged - party can take the course prescribed by law for setting matters right and if that same course is not taken, the decision however wrong cannot be disturbed. (Vide Arun Chandra Sinha V. Manamohan Sinha A.I.R.1924 Cal. 154). It is not

for this court to sit in Judgment over the decision of the Deputy - Registrar. Even if his decision is wrong, it must stand since it has been confirmed in appeal by the Government of Bombay. It has been so - held in 40 Allahabad 89 (Mathura Prasad V. Sheo Balak Ram). The facts in that case were as follows :- A society formed under the co-operati societies Act 1912, went into liquidation the Liquidator, having taken - mortgages from the various persons who were members of the society and had received advances, proceeded to make an order, purporting to be passed - under Section 42 (a) of the Act determining that each of the debtors - should be jointly and severally liable for the full amount of the several debts. This order was then taken to the Civil Court having local - jurisdiction to be enforced under Section 42 (b) (a). It was held that th liquidator was probably wrong in passing the order which he did, but that, the order being one within section 42 of the Act, the Civil Court had no - option but to enforce it and that no appeal lay to the District Judge nor a second appeal to the High Court. Their Lordships observe as follows on - page 92 :- " It is clear that the policy of the Act was that matters - arising under the Act should be settled without litigation in the courts. If litigation were permitted, the whole object of the co-operative - Societies Act would be defeated ".

Section 42 (6) of Act II of 1912 (Imperial Act) read as - follows :- " Save in so far as is herein before expressly provided, no - Civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act ". These - words are practically similar to the words employed in sections 51 of the Bombay Act VII of 1925 and the principle of the decision in 40 Allahabad 89 applies to the facts of this case.

(19) In 44 Bombay 582 (Ganpat Ramrao Masur V. Krishnadas Padmanabha Chandawarkar) the facts were as under :- A liquidato of a co-operative Society, in the course of the winding up of the society, made certain orders against persons who he thought were responsible to - account to him for the assets. The persons filed suits for a declaration that the orders were null and void. It was held by Macleod C.J. and Heaton J. that the orders by the liquidator were matters in connection with the -

dissolution of a registered society, and therefore the Civil Court had no jurisdiction to entertain the suits under clause (6) of the Section 42 Co.operative Societies Act 1912. Macleod C.J. observes as follows in his judgment :- " That sub-section ousts the jurisdiction of a Civil Court - entirely. It is impossible to see how we can deal with a mat-er which is connected with the dissolution of a regist red society. As was pointed - out in Mathura Prasad V. Sheobalak Ram, though the liquidator may be - probably wrong in passing an order, still, if the order was one with in - Section 42 of the Act, the Civil Court has no option but to enforce it. Of -course if the liquidator passes an order which does not come within - Section 42, that is a different matter altogether ". Justice Heaton says in his judgment :- There can be no doubt that all his acts as liquidator, at any rate in all ordinary cases, are concerned with the dissolution of a registered society, and it is only if a Liquidator's act or order is shown to be clearly ultravires, that is out side the powers conferred upon him by law as a Liquidator, that the Civil Court could possibly intervene".

Other rulings on the point are A.I.R. 1935 Lahore 330 (2) - (Mahmad Borkal Alikhan V. Anjuman Imdad Murza) ; A.I.R.1944 Calcutta 245 - (Meherdi Manshi V. Inspector Co-operative Societies) A.I.R. 1943 Bombay 341 (G.I.P.Railway Employees Co-operative Bank Ltd., V. Ehikaji Merwanji Karanjia).

(20) The plff's learned pleader cited the following authorities in support of his argument that the jurisdiction of the Civil Court is not - ousted : 65 Indian appeals 301 (309) ; 26 Bombay 294 (297) ; 37 Bombay 542 ; 39 Bombay 293 and 44 Bombay L.R.577. I have gone through them and found that none of them supports the argument of the learned pleader for the plff. The first mentioned case was under Section 77 of the Punjab Tenancy Act(xvi of 1887) which provided that Revenue Courts only and no other courts " shall - take congnizance of any dispute or matter with respect to which any suit - might be instituted :- (j) suits for sums payable on account of village - cesses or village expenses . The appellant before the board was entitled , as the principal proprietor of village K to realize door tax, a customary - village cess from the non-proprietors living inside the village. The mahant of a shrine in the village, alleging that he did not belong to the class of

57 27 215

persons from whom the cess could be demanded, brought a suit in a Civil Court for a declaration that he was not liable to pay the cess to the appellant. The Privy Council held that the suit was one of which the - Civil Court was forbidden to take cognizance by the terms of - Sub-section 3 of Section 77 of the Panjab Tenancy Act. The observations of the Board on page 309 are to the following effect :- " had the suit brought in the Civil Court been a suit to declare that Haq - Bacha was not a village cess within the meaning of the Act of 1887, and that the Revenue courts had not jurisdiction in respect of thereof, such a suit could not have been regarded as incompetent. On principle it is for the Civil Court to determine in the lost resort the limits of the powers of a court of special jurisdiction, and no statutory provision to the - contrary has been drawn to their Lordship's attention in the present - case

(21.) No exception has or could be taken to the principle - stated above. In this case, the Deputy Registrar had jurisdiction to - inquire and pass orders under Section 50 A of the Societies Act. The - order passed by him is prima facie legal and valid. Even, assuming for the sake of argument, that he committed some mistakes in procedure or that his decision was wrong, it is not understood how the Civil Courts can interfere with his decision. It is only where he acted without - without jurisdiction and consequently his order was null and void. - That the Civil court can interfere and declare his order to be ultra - vires, null and void. The case in 26 Bombay 294 does not at all support the plff(s plea. It was held in that suit that in the absence of - proof of mala fides, perversely or manifest error, Civil courts ought not to interfere with the house valuation made by a Municipality for the purpose of taxation , unless there is a breach of rules prescribed by law for making the valuation . In 37 Bombay 542 a certain Mamlatdar had exercised power under Section 140 of the Land Revenue Code without powers being delegated to him. His action was challenged in a court of law. It was held that where the legality of the proceedings intitiated by a Revenue Officer is in question, the court has to inquire under Section 6

of the Revenue Jurisdiction Act, whether the act complained of was done bonafide by the officer in persuance of the provisions of any law. The question of the Mamlatdar's bonafides had to be inquired into, because his action was without jurisdiction. In 38 Bombay 293, the complaint was that the assessment levied by cantonment authorities was illegal. The cantonment Magistrate in notifying that any complaints against the increased rate must be made within three days from the service of his notice of the 8th October 1908 had disregarded the express provisions of the regulations. The plffs were called upon within three days to show cause why the rate imposed upon them should not be raised to from Rs.201 to Rs.9,840. Scott J. observes as follows on pages 305 - 306. Such a serious demand was a matter requiring very attentive consideration and reasonable time was not given to the plff to take any advice upon the subject on that ground alone, therefore, we think that the action of the cantonment Magistrate was not warranted by th Regulations --- We think that the objection is well founded, that the Cantonment Magistrate did not charge a rate under the provisions of the Regulations --- that the cantonment Magistrate has wholly disregarded, the basis upon which the rate is to be assessed. He has assessed a rate upon the gross income of the plff, which would not even be a basis for the levy of incometax ------- where the taxing authority is called upon to assess the tax based upon annual letting value he does very wrong indeed if he rates as if he were dealing with the question for the incometax. The law does not justify his action at all. It was out side the law, and he has assumed powers which the law has not given to him

22. Such are not the facts of this case wherein the Deputy Registrar has acted with jurisdiction and within the four corners of the law. The case in 44 Bombay L.R. 577 (Abdullamiyan Abdulrehman V. The Government of Bombay) is authority for the proposition that " where a revenue officer purports to do an act or pass an order which is invalid, his action does not operate to raise a bar under Section 11 of the Bombay Revenue Jurisdiction Act, 1876 -- where an authority which purports to pass an order is acting without jurisdiction, the purported order is a mere nullity ". This ruling does not in my opinion help the plff. Taking all the facts and circumstances into consideration, I hold

53 25 207

that this court cannot take cognizance of this suit.

(23) I now take up the question of limitation. The parties agree that the article of the Limitation Act that applies to the facts of these suits is article 14, first schedule. Under the said article time begins to run from the date of the order which is sought to be set aside. In these cases, the order of the Deputy Registrar was passed on 21-4-1942 (Vide Ex. 44). The plff in both the suits preferred appeals to the Government of Bombay under Section 64 of the Societies Act. The Government rejected the appeals on 3rd November 1942 (Vide Ex.51). Under Section 15 (2) of the Limitation Act.' In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded . These suits have been filed on 3-1-1944. So, if the starting point of limitation is taken from the date of the Government 's order and if the period of the notice under Section 80 of the C.P.Code is excluded, the suits would certainly be in time . But the Government pleader argues that time begins to run not from the date of the order of the Government in appeal but from the date of the order of the Deputy Registrar. He relies upon the rulings in 22 Bombay L.R. 146 (Chhotubhai V. The Secretary of State for India) and 22 Bombay L.R. 212 (Ganesh Shesho Deshpande V. The Secretary of State for India)-. In my opinion these rulings do not apply to the facts of these suits. They have been given with reference to section 11 of the Revenue Jurisdiction Act which provides that " No Civil Court shall entertain any suit against Government on account of any act of omission of any Revenue Officer unless the plff first proves that previously to bringing his suit, he has presented all such appeals allowed by the law for the timebeing in force as within the period of limitation allowed for bringing such suit, it was possible to present ". Under Section 11 of the Revenue Jurisdiction Act, the plff is bound to prefer such appeals only as within the period of limitation allowed for bringing the suit, he could present. He was not bound to wait, in fact he could not wait till he preferred all the appeals allowed by law if by sond doing he exceeded the period of limitation allowed for bringing the suit. Section 11 of the R.J.Act does not apply to these suits. In these cases, the date of

the order means the date of the final order passed in appeal. It has been sold held in 21 calcutta 626 and 39 Madras 1196). I therefore hold that the suits are in time.

24. I now take up issue No.2 which arises in this suit - only. In execution of the order passed by the Deputy Registrar on - 21st April 1942, the plff's property i.e. City S.No.36/D of Dharwar was attached and put up for sale. The sale has been held and duly confirmed after rejectingthe petitions made by the plff for setting aside the - sale (Vide Exs.47, 48 and 50). The auction purchaser is one Shankarrao Mahbleshwar Borkar was given possession of the property sold on 6-10-1943 (Vide Ex.49). Plff has not claimed any relief in this suit as - regards the property sold. He has not impleaded the auction purchaser to the suit. He does not ask for possession of the property in question. He has simply asked for a declaration that the order passed by the Deputy Registrar on 21-4-1942, subsequently confirmed in appeal by the - Government was illegal and ultra vires and not binding upon the plff. - No consequential relief is sought for regarding the sale of his - property and the loss of its possession. The defendants contend that the suit was barred under Section 42 of the Specific Relief Act. The proviso to the said section reads :- no court shall make any such declaration where the plff, being able to seek further relief than a mere declaration of title, omits to do so . The defts are not in possession of the - property sold . As against them , it was not necessary to ask for any - relief regarding the property sold. There is no rule of law to compel a plaintiff to ask for all the reliefs that he is entitled to or might obtain if he soi desired. (Vide 5 Bombay L.R.195), The words being - able to seek further relief in the proviso to section 42 of the Specific Relief Act, mean further relief against the defts to the suit and not - against persons who are not parties to the suit (Vide 36 Madras 62 and 3 Patna 409). As against the defts to the suit, the plff has asked for all the reliefs he is entitled to. It is not necessary for us in this - suit to see what effect the declaration sought will have upon the auction sale of the plff's property, if it is granted. I hold that the suit is - not barred under Section 42 of the Specific Relief Act.

55 37 209

(25) The plff has valued the plaint for purposes of - jurisdiction and pleader's fees at Rs.200/- only. This is clearly wrong. Under Section 24 of the Bombay Civil Courts Act (XIV of 1869). The - jurisdiction is to be determined according to the amount or value of the subject matter. This amount is Rs.15100/- i.e. the amount which the - Deputy Registrar has ordered the plff to pay and which the plff disputes. The Subject matter of the suit is the plff's liability to pay the said - amount and the value is thus Rs.15,100/-. The court fee to be paid on the plaint is not advalorem but fixed under article 17 of the court ax fees Act. Section 8 of the suits valuation Act does not apply to the - plff's suit (Vide 47 Bombay L.R. 385). I therefore hold that for - purposes of jurisdiction the value of the suit should be taken at - Rs.15100 /- and not Rs.200/-.

(26) Under schedule iii to the Bombay pleader's Act - (Act XVII of 1920), the amount of the pleader's fees shall be - computed on the amount or value of the subject matter in dispute in the suit. This amount is Rs,15,100/- and not Rs.200/-. I therefore hold that the suit should have been valued at that amount for pleader's fees as - well. As I have juris iction to try the suit even if the suit is valued at Rs.15,100/-, it is not necessary to return the plaint for presentation to any other court.

(27) Lastly, I consider one more point which had - escaped my notice. The plff had, as stated above, preferred an appeal to the Government under Section 64 of the Societies Act against the order passed by the Deputy Registrar on ~~xixixi~~ 21-4-1942. It appears that - the plff had made a request that he may be allowed to argue the appeal before the Government either in person or through a pleader but that the Government did not accede to his request (Vide Ex.58). Ultimately, the Government rejected the appeals (Vide Ex.61). It was argued that in as much as the Government did not give him an opportunity to argue the appeal personally or through a pleader . The order rejecting his appeal was vitiated and not binding upon the plff. No authority in support of

this argument was shown to me. There is nothing in the Societies Act or the rules made thereunder that the Government was bound to hear the appellant in person or through a pleader. The Government had before it all the materials to enable it to come to a decision. Opportunity was given to the plff and the other directors before the Deputy Registrar to engage the services of pleaders. The plff and the others had given length defence in writing. The Deputy Registrar had written a very careful and elaborate order in which he had discussed all aspects of the case in general and particular. I do not think that the mere fact that plff was refused opportunity to argue the appeal in person or through a pleader vitiated the order passed by the Government. The provisions of order 41 of the C.P.Code did not apply to the appeal before the Government. However written arguments were put in by one Mr.C.D.Gumaste pleader from Belgaum presumably on behalf of all the three persons named in Ex.51 i.e. Messrs M.B.Jakati, K.N.Nadgir and V.B.Desai. I pass the following order.

Order.

28. Suit dismissed with costs. Plff to pay the costs of the mf defts. Pleader's fees to be calculated on Rs,15,100/-.

31-7-1945.

Sd/- M.S.Bagali.
Civil Judge Senior Division,
Dharwar.

Copied by

Compared by

True Copy

Clerk of the Court.

Copy was applied for in person on the (18th) Eighteenth August 1945.

Clerk of the Court.

It was ready for delivery on the (21st) Twenty first August 1945.

Clerk of the Court.

It was delivered on 30 (thirtieth) August 1945.

Clerk of the Court.

1900
3-12-0
0-15-0
0-1-0
4-12-0

Received on 3-1-1944.
Registered on 3-1-1944.
Decided on 31-7-1945.
Duration 1 year 6 months and 28 days.

In the Court of the Civil Judge, Senior division, at Dharwar. Ex. 35.

L.C. civil suit No. 2 of 1944.

Pleaders.
Mr. Sidenur. Venkatrao Bhimarao Desai of Betadur Taluka Kundgol in Jamakhandi State, Brahmin, age 42 .. .. Plaintiff.

Against.

Mr. Malapur for 1 -2
1. Provincial Government of Bombay.
2. The Registrar Co Operative Societies, Bombay Presidency Poona.

Claim Rs. 200/- for all.

The plaintiff sues for a declaration that the order passed by the Deputy Registrar of Co Operative Societies on 21-4-1942 under section 50 A of the Society's Act directing the plaintiff to contribute a sum of Rs. 1500/- towards the assets of the Urban Co-operative Bank Ltd. Dharwar and the subsequent order of the Govern-ment of Bombay confirming the said order, were illegal and ultra vires and not binding upon the plaintiff and to recover costs of suit from the defendants.

1. The plaintiff alleges in the plaint that he was one of the directors of the Urban Co Operative Bank from about the year 1928 that the Bank was carrying on money lending business and has come into liquidation since the year 1939; that the Government appointed the Deputy Registrar of Co Operative Societies to enquire into about 20 cases of loan applications which according to the liquidator and the Registrar required investigation under section 50 A of the Societies Act as to whether loss had been caused to the Bank by the conduct of the plaintiff and the other directors of the Bank and if so what amount they should be called upon to pay to the said Bank; that the Deputy Registrar held an enquiry into the said

20 cases and passed an order dated 21-4-1942 directing the plff to contribute a sum of Rs . 1500/- to the funds of the said Bank in the matter of advancing the following loan :-

Serial No. :

Name of the borrower	Amount of loan	Date of loan	Amount plff was directed to pay.
B.C.Mantri	Rs . 1500/-	24-6-1929	Rs . 1500/-.

2. The plff filed an appeal to the Provincial Government against the order of the Deputy Registrar but it was summarily rejected without giving an opportunity to the plff to support his appeal; that the orders passed by the Deputy Registrar and the Government were illegal and ultra vires; that the Registrar and the Deputy Registrar were disqualified to enquire into these matters as the Li uidator was working under them.

3. Detailed reasons have been given in the plaint as to why and how the orders in question were illegal and ultra vires. They are as follows :-

1. The said enquiry is viciated by the fact that inquiry has taken place after a long time when some of the directors were dead who could have thrown ligh
2. The enquiry is illegal as the heirs of the deceased xx Directors were not brought on record.
3. The enquiry was illegal as all these loans were considered by the special auditors and special committee appointed by the General body and found to be satisfactory. That no case of misfeasance or breach of trust has been made out against the plaintiff.
4. The said order is illegal in as much as it never considered the loan rules authorised by the General Body.
5. That the decision of the Deputy Registrar charging the plaintiff with special liability because in some cases he was asked to report as was directord is illegal and ultra vires.
6. The plaintiff has done his duty bona fide and to the best of his ability.
7. No loss has been caused to the said Bank on account of the conduct of this plaintiff.
8. The decision is passed ignoring the rules and bylaws of the Society.

4. The defendants in their written statements Ex. 24 contend that the suit was barred under Section 51 of the Bombay Co -Operative Society's Act 1925, that the plaint does not contain a proper averment of the xxxxxxx

34 : 9 213

of the delivery of notice under Section 80 C.P.Code. Therefore it was liable to be rejected under order 7 rule 11 of the C.P.Code; that the suit is also barred under Article 14 of the Limitation Act; that the Dharwar Urban Co-Operative Bank was ordered to be wound up on 27th January 1940 that it was not in liquidation since 1939 as alleged in para 1 of the plaint; that the order of the Deputy Registrar was legal and intra vires; that under the Government notification Revenue Department No. 522/28, dated 31-7-1939, the powers to hold enquiry into cases of alleged misfeasance and breach of trust under section 50 A of the Bombay Co-Operative Societies Act 1925 were delegated to the Deputy Registrar; that the enquiry held by him into the 20 cases of alleged misfeasance and breach of Trust was in the exercise of the powers delegated to the Deputy Registrar and that therefore the order passed by him was intra vires and binding upon the plaintiff; that the plaintiff's allegation that the Registrar and the Deputy Registrar were disqualified to enquire into the matters as the liquidator was working under them is incorrect that though the Liquidator was a Departmental employee he still acted independently in his capacity as a liquidator; that neither the liquidator nor the registrar had any personal interest in the bank; that action under Section 50 A of the Bombay Co-Operative Societies Act can be taken only during the winding up proceeding ; that the bank was ordered to be wound up in 1940 and these proceedings started soon after the liquidator made applications in that behalf to the Registrar; that no particular time limit has been prescribed in the act or rules within which such action is to be taken; that the plaintiff cannot therefore challeng the legality of the enquiry and order on the ground that the enquiry was held long after the transactions, that the Section 50 A does not provide for action being taken against the heirs of the deceased directors. Besides the plaintiff was ordered to contribute only for such losses as were caused to the Bank by his own misfeasance and breach of trust; that it was not necessary to make the heirs of the deceased Directors parties to the inquiry; that the special auditors appointed by the Registrar in 1931 and the special committee appointed by the General body were not appointed to deal with

these individual cases of bad debts and that their reports have no bearing on particular cases of loan transactions; that the Deputy Registrar has dealt with each individual item of bad debts separately and has found that loss was caused by the plff's misfeasance and breach of trust; that his order directing plff to pay Rs . 1500/- was justified and legal.

On these pleadings the following issues were framed at Ex. 28 :-

Issues.

1. Whether the plaint does not contain a proper averment of the delivery of notice as required by section 80 of the C.P.Code; if so is the plaint liable to be rejected under order VII rule 11 C.P.Code ?
2. Is the suit barred by limitation under Article 14 of the Limitation Act ?
3. Is the jurisdiction of this Court to entertain the suit barred under Section 51 of the Bombay Co-Operative Societies Act 1925 ?
4. Was the order passed by the Deputy Registrar on 21-4-1942 illegal ? ultra vires and invalid for all or any of the reasons mentioned in the plaint ?
5. What is or should be the valuation of the suit for purposes of jurisd and pleader's fees ?
6. What order should be passed ?

Findings.

1. Yes; yes. 2. No. 3. Yes. 4. Not proved.
5. Rs . 1500/-. 6. As below.

Reasons.

This suit was treated as companion to L.C. suit No. 1 of 1944 and heard with it. Judgment has been recorded in the latter suit. For reasons vide the said judgment.

Order.

Suit dismissed with costs. Plaintiff to pay the costs of the defendants. Pleaders fees to be calculated on Rs . 1500/-.

31-7-1945. Sd/ M.3.Bagali.
C.J.3.D.

Copied by

Clerk Compared by

" True Copy "

Clerk of the Court.

Suits: 61 35 217

Dharwar.
or a declaration that the order passed by the Deputy Registrar Co-operative Societies, on 21st April 1942 in case No. MSF 1 of 1940 and confirmed in appeal by Government on 3rd November 1942, is illegal and ultra vires and for costs and other reliefs.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 872-
Bombay Castle, 31st January 1946.

Slip 'A' file below.

Read Government Resolution, Legal Department, No. 492 dated the 19th January 1946.

→ P. 33 ante.

Letter from the Collector of Dharwar No. L.A.W. dated the 27th December 1945 forwarding a copy of the letter No 575, dated 2nd December 1945 from the District Government pleader

In the Court of the First Class Sub-Judge, Dharwar.
Civil Suit No. 2 of 1944.

Venkatrao Bhimrao Desai .. .. .. Plaintiff;
versus.
(1) The Provincial Government of Bombay.
(2) The Registrar, Co-operative Societies, Bombay Province, Poona. Defendants.

Claim - Rs. 200/-

Dharwar together with its accompaniments and stating that the plaintiff in the suit noted in the margin has now preferred an appeal No. 248 of 1945 in the Court of the District Judge Dharwar against the decision of the Civil Judge (Senior Division) Dharwar dated the 31st July 1945 in the suit noted in the margin and requesting sanction to its defence.

→ P.P. 29-32 ante.

S.P. 33 ante.

Endorsement from the Commissioner Southern Division, No. L.S.T. 314 dated the 9th January 1946 forwarding the above with his concurrence.

RESOLUTION : Sanction is accorded to the defence of the Civil Appeal No. 248 of 1945 in the Court of the District Judge, Dharwar on the lines of the brief accompanying Government Resolution, Legal Department No. 7079, dated the 11th October 1944 and the favourable grounds contained in the Judgement of the Civil Judge (Senior Division) Dharwar, dated the 31st July 1945.

§ Slip C.

→ P.P. 29-32 ante.

By order of the Governor of Bombay.

Original. R. M. Mehta.

R. M. Mehta.

Assistant Secretary to Government.

Submitted for signature. To orders at p. 34 ante. KSP. 31/1/46.

The Revenue Department,
The Registrar of Co-operative Societies and Director of Rural Devlopement, Poona.
The Commissioner, S. D.
The Collector of Dharwar.
The District Government Pleader, Dharwar.

BM.8c

Issued KSP 31/1

2/8

Submitted after issue
File in S DWR 3/45
KJP 1/2/46
A.S. 1/2/46

S DWR 3/45
2/2

G.C.P.—(I) J 164—500—8-40—X4
G.R., J.D., No. 4398 dated 8-7-16

[Spl.—H.C. A.S. Civ. 20 e

63224-

IN HIS MAJESTY'S HIGH COURT OF JUDICATURE, APPELLATE SIDE, BOMBAY

APPEAL No. 470. OF 1945 FROM Original DECREE

Madhavrao Balkrishna Jakati of Dharwar. (Mr. K.S. Dalal) } Appellant

versus

The Provincial Govt. of Bombay } Respondent

Claim—Rupees 200/- for Court fee
1510/- for Advocate's fee.

No. 235 OF 1946.

From

THE DEPUTY REGISTRAR,
High Court, Appellate Side, Bombay;

To

The Secretary, Legal Department,
Govt. of Bombay, Bombay.

Bombay, 4th January 1946.

Sir,

The Appellant abovenamed having presented an appeal from the decision of the Civil Judge, S.D. of Dharwar in Suit No. 1 of 1944, and the same having been registered in this Court, and this Court having on 21st December 1945, ordered notice to issue, I have the honour to inform you that the hearing of the said appeal will take place on the 25th day of ~~December~~ March 1946, or on any subsequent day which to this Court may seem convenient; and that if no appearance is made on your behalf ~~either in person or~~ by a pleader of this Court or agent duly authorized and instructed, it will be heard and determined in your absence.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/ S. H. Belvadi,
18-1-1946.
Deputy Registrar.

To be served on the Govt. Pleader.

65

IN HIS MAJESTY'S HIGH COURT OF JUDICATURE AT BOMBAY.

FIRST APPEAL No. 470/45. (Dist:Dharwar).

Madhavrao Balkrishan Jakati of Dharwar. .. Appellant.
(Original Plff.)

Vs.

1.The Provincial Government of Bombay.

2.The Registrar Co-operative Societies,
Bombay Province, Poona. ..... Respondent.
(Original Defts).

Claim Rs.200/- for Court fees.
Rs.15100/-for Advocate's fee.

The appellant named above begs to prefer an appeal to this Hon'ble Court from the decree dated 31-7-1945 passed passed by the Civil Judge Senior Division of Dharwar in L.C. Suit No.1 of 1944 and to set forth the following grounds of objection to the decree appealed from, namely:-

1) That the findings of the lower Court on the issues Nos.1,4,5,6 and 7 are wrong.

2) That thelearned Civil Judge erred in holding that the important issues raised in the suit could be disposed of without any oral evidence.

3). That the lower Court ought to have held that the averment in the plaint regarding the notice was a sufficient compliance with the provisions of Section 80 C.P.Code.

4) That the lower Court ought not to have held that the plaint was liable to be rejected even assuming that the statement in the plaint regarding the delivery of the notice had not been expressly averred in the language of the section.

5) That when the fact of the notice had not been denied by the defendants, the technical omission, if any, to make the necessary statement in the words of the section could have been cured by a formal amendment of the plaint in that behalf.

6) That the appellant respectfully prays that if

this Hon'ble Court were pleased to hold that the plaint ought to ~~xxxx~~ contain a statement expressly in terms of the section regarding the delivery of the notice, plff. may be allowed to amend plaint in that behalf.

7) That on the day when the suit was taken up for hearing, the suit had been fixed only for the preliminary hearing on issues Nos. 2. 3. 4 and 6. and the learned Civil Judge ought to have in the first instance proceeded to record his findings on those issues relying upon the averments made in the plaint.

8) That the other issues which had been framed in the suit were not issues of law only, and the learned Civil Judge erred in recording his findings thereon without reference to the appropriate evidence in the case and without allowing plaintiff to substantiate his contentions by adducing evidence on his behalf.

9) That the learned Civil Judge erred in treating issues Nos. 1 and 5 as preliminary issues and in holding that the suit could be disposed of without any evidence.

10) That when the learned Civil Judge treated (though erroneously) issues No.1 and 5 also, as issues of law only he ought to have recorded his findings on them, taking the statements in the plaint as true and proved.

11) That when the suit had been fixed for the preliminary hearing, the plaintiff could not adduce his evidence and examine his witnesses on that day but submitted his arguments only on issues Nos. 2, 3, 4 and 5.

12) That the plaintiff was anxious and ready to adduce oral and documentary evidence on his behalf at the proper time when after the preliminary hearing, the suit had to be set down for hearing on the other

69 8 227

issues of fact.

13. That the learned Civil Judge ought not to have recorded his findings on issues Nos.1 and 5 along with the other issues when the parties did not know that those issues would also be considered and found upon at the preliminary hearing

14. That the procedure followed by the learned Judge was contrary to law and has occasioned failure of justice.

15. That the lower Court ought to have held that the Deputy Registrar had no jurisdiction to hold the inquiry and pass orders under section 50A of the Society's Act.

16. That the lower Court has not considered the several circumstances in the case which showed that the Deputy Registrar was unduly and unnecessarily prejudiced against the plaintiff.

17. That the lower Court ought to have held that the Deputy Registar had rendered himself incompetent to hold the inquiry of thenature contemplated by Sec.50A.

18. That the Lower Court ought to have held that the plaintiff was not given adequate time by the Deputy Registrark to prepare his defence.

19. That the Deputy Registrar did not follow the proper procedure in the course of his inquiry andthe procedure followed by his offended the rules of natural justice..

20. That the lower Court ought tohave held that the plantiff's liability under Section 50 A if any, could arise only after it was satisfactorily proved that the remedy against the dbtors and their sureties was found to to be of no avail.

21. That the learned Civil Judge ought not to have relied merely upon the passages from the Deputy Registrar's Report for determining whether it had been vitiated by illegality and irregularity as contended by the plff.

22. That the lower Court ought to have held that the orders of the Deputy Registrar had been made without jurisdiction and therefore did not bar a suit for reliefs inconsistent with those orders.

23. That the Registrar could exercise the prescribed powers only if the conditions mentioned in the statute (in the case, the Society's Act, 1925) were satisfied but had no jurisdiction to determine finally whether these conditions were in fact satisfied.

24. That the lower Court ought to have held that it was for the Civil Court alone finally to adjudge whether there was any breach of trust or whether the other conditions stated in Section 50A had in fact been satisfied.

25. That if the Civil Court independently came to the conclusion that the conditions in the section had not in fact been satisfied, the order passed by the Registrar under section 50A would be ultra vires and a nullity and there would be no bar to the present suit under section 51.

26. That the lower Court has not applied the correct rule of law and procedure to the facts of the present case.

27. That the lower Court ought to have held that the order passed by the Government in the appeal preferred under Section 64 was not binding upon the plaintiff.

28. That the lower Court erred in holding that Mr. G. D. Gumaste was plaintiff's pleader and that he submitted arguments either before Government or before the Deputy Registrar.

29. That the lower Court has not framed proper issues in the case.

69

30. That the lower Court erred in fixing the suit for preliminary hearing on some issues only when the suit had already been fixed for fianl hearing on all the issues on more than one occasion.

31. That the order as to costs and the order as regards valuation for jurisdiction and pleader's fees are wrong.

32 That the decree of the lower Court is wrong in law.

B o m b a y,
d/1-11-1945.

Sd. K.G.Datar,
Advocate for the Appellant

Received on 8-9-1945.
Registered on 19-9-1945.
Decided on 21-7-1949.
Duration - three years, ten months and thirteen days.

In the Court of the District Judge, Dharwar
at Dharwar: Ex.18.

Appeal No.243 of 1945 from decree in
Civil Suit No. 2 of 1944 of the Court of the
Civil Judge, Senior Division, Dharwar (Mr.M.S.Bagali

Pleaders :-

Mr. Sidenur. Venkatarao Bhimarao Desai of Betdur, Taluka Kundgol in Jamakhandi State ... ... Appellant (Or.plff).

against.

Mr.Malimath, Govt Pleader. 1. Provincial Government of Bombay.
The Registrar, Co-Operative Societies,
Bombay Presidency, Poona. ...Respondents (Or.defts)

Claim Rs.200/-.

Judgement.

This is an appeal against a decree in L.C.S.No.2 of 1944 passed on 31-7-1945 by the Civil Judge, Senior Division, Dharwar. The appellant was the plaintiff.

2. The suit was filed on 3-1-1944 to obtain a declaration that an order passed by the Deputy Registrar of the Cooperative Societies on 21-4-1942 under section 50 A of the Cooperative Societies Act calling upon the plaintiff to pay an amount of Rs.15,000 towards the

assets of the Urban Co-operative Bank Ltd., Dharwar and a subsequent order of the Government of Bombay confirming that order were illegal and ultra vires and not binding on the plaintiff. The allegations in the plaint were that the plaintiff was a director of the Urban Cooperative Bank Ltd., Dharwar from 1923 to 1934. The Bank went into liquidation in 1939. The Government appointed the Deputy Registrar of the Cooperative Societies to enwuire into the cases of some loans which, according to the liquidator and the Registrar required an investigation under section 50A of the Societies Act, to ascertain whether the loss had been caused to the Bank by the conduct of the plaintiff and other directors of the Bank. The Deputy Registrar, after an enquiry, passed a n order on 21-8-1942 directing the plaintiff to pay an amount of Rs.15,100 by reason of his alleged responsibility in the matter of advancing of loans to the six persons on behalf of the bank. The plaintiff filed an appeal to the Provincial Government against the order of the Deputy Registrar but the appeal had been summarily rejected without the plaintiff being given an opportunity to be heard. Several reasons were given plaint in support of the plaintiff's case that the order of the Deputy Registrar was illegal and that the plaintiff was not guilty of malfeasance or of breach of trust as a Director of the bank. It may be noted that the plaintiff had merely asked for a declaration with no consequential relief.

3. The suit was resisted by the defendants. By their written statements (Ex.17), it was contended that the suit was barred under section 51 of the Bombay Co-operative Societies Act, that it was barred under section 18 C.P.C., that the plaintiff had not asked for a consequential relief of having the

Suits

Dharwar.

71 233

For a declaration that the order passed by the Deputy Registrar Co-operative Societies, on 21st April 1942, in case No.MSF 1 of 1940 and confirmed in appeal by Government on 3rd November 1942, is illegal and ultra vires and for costs and other reliefs.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 1970
Bombay Castle, 9th March 1946.

Read Government Resolution, Legal Department No.492, dated the 19th January 1946.

Endorsement by the Government Pleader, High Court, Bombay, No.265, dated the 22nd January 1946, forwarding a copy of his letter No.264, dated the 22nd January 1946, addressed to the Collector of Dharwar together with a copy of the notice and stating that the plaintiff in the suit noted in the margin has now preferred Appeal No.470 of 1945 in the High Court, Bombay, against the decision of the Civil Judge (S.D.), Dharwar, dated the 31st July 1945, in the suit noted in the margin and requesting him to apply for the sanction of Government to the defence of the same.

In the Court of the First Class Sub-Judge, Dharwar.
Civil Suit No.1 of 1944.
Madhavrao Balkrishna Jakati .. Plaintiff;
vs.
1). The Provincial Government of Bombay.
2). The Registrar, Co-operative Societies, Bombay Province, Poona. Defendants.

Letter from the Collector of Dharwar No.L.A.W.441, dated the 23rd February 1946, requesting sanction of Government to the defence of the First Appeal No. 470, of 1945, in the High Court, Bombay.

RESOLUTION:- Sanction is accorded to the defence of First Appeal No.470 of 1945 in the High Court, Bombay, on the lines of the brief accompanying Government Resolution, Legal Department, No.7079, dated the 11th October 1944, and the favourable grounds contained in the judgment of the Civil Judge (S.D.) Dharwar, dated the 31st July 1945.

By order of the Governor of Bombay,

Original

R. M. MEHTA,
Assistant Secretary to Government.

To

The Revenue Department,
The Registrar, Co-operative Societies and Director of Rural Devlopment, Poona,
The Commissioner, S.D.,
The Collector of Dharwar,
The Government Pleader, High Court, Bombay.

Issued L&C 4/3

Submitted for Signature
Orders at P. 6 Ante

sale, which had been held in pursuance of the Deputy Registrar's order set aside and, in the absence of such relief, the suit was barred under section 42 of the Specific Relief Act. The suit was also barred under section 14 of the Limitation Act. It was alleged that the order of the Deputy Registrar was legal and intra vires and the Deputy Registrar had been invested with the power to hold an enquiry into the alleged acts of misfeasance or breach of trust committed by the Directors. As regards the enquiry by the Deputy Registrar, it was contended that the plaintiff was given all reasonable opportunities to defend himself. He had engaged a pleader and filed a written statement and the Deputy Registrar, after considering individual items of bad debts seperately, had found that the loss to the Bank was due to the plaintiff's misfeasance and breach of trust.

4. This suit and special Suit No.1 of 1944 which had been filed by the Managing Director challanging a similar order order of the Deputy Registrar, were heard together as the issues in both the suits were identical. The two suits were disposed of by one judgement.

5. The issues framed in the lower Court and the findings given on them by the learned Civil Judge were as below :-

1. Whether the plaint does not contain a proper averment of the delivery of notice as required by section 80 C.P.C.; if so, is the plaint liable to be rejected under order VI rule 11 C.P.C.
2. Is the suit for mere declaration barred under section ~~ex~~ 42 of the Specific Relief

Act as contended by the defendants in para 3 of their written statements ?

3. Is the suit barred by limitation under article 14 of the Indian Limitation Act ?

4. Is the jurisdiction of the Court to ascertain the suit barred under section 81 of the Bombay Cooperative Societes Act ?

5. Was the order passed by th Deputy Registrar on21-4-1942 illegal, ultra vires and invalid for all or any of the reasons mentioned in the plaint ?

6. What is or should have been the valuation of the suit for purposes of jurisdiction and pleader's fees ?

7. What order should be passed ?

F i n d i n g s.

1. It does not; Yes. 2. No. 3. No.
4. Yes. 5. Not proved 6. Rs.15,100/-
7. As per final order.

6. The plaintiff in special jurisdiction suitNo. 1 of 1944 had preferred an appeal (First Appeal No.470 of 1945) to the High Court. The present appeal was therefore kept pending the disposal of the appeal by the High Court at the instance of the plaintiff. The High Court appeal was decided on 1-12-1948. The decision of the Civil Judge, enior Division, Dharwar dismissing the suit was upheld by the High Court. As it took some time for the plaintiff-appellant in this appeal to obtain a copy of the High Court judgement the appeal was fixed for hearing on 16-7-1949. At the hearing of the appeal, the learned pleader fot th appellant fairly conceded that, in view of the decision of the High Court in the companion suit - Special Suit No.1 of 1944, he could not press the appeal which must

therefore be dismissed. He however alleged thatas a recommendationx was made by the High Court to to the Government to give to the plaintiff in that suit an opportunity to be heard either in person or through an advocate in the matter of the appeal which the plaintiff in that suit had filed before the Government against the order of the Deputy Registrar, the plaintiff in this suit who had preferred a similar suit appeal to Government, should also be given an opportunity to be heard and therefore a recommendation on the same line should be made by this Court.

7. It is clear from the judgement of the learned Chief Justice that the two suits barred by the provisions of Section 51 of the Bombay Co-operative Societies Act. His Lordship held that the ~~Deputy Registrar had jurisdiction to pass~~ the order against which the suit had been filed and that order could not be called in question merely because that decision of the Deputy Registrar was not correct. In the High Court, it was pointed out that the plaintiff in that suit had a grievance in-as-much as the Government had not given to him a hearing before the Government dismissed his appeal summarily This is also the grievance of the plaintiff in this suit. I would, therefore, while dismissing the appeal, strongly recommend to Government that, in the matter of the appeal which the plaintiff-appellant had filed to Government, the Government should be pleased to give him an opportunity to be heard either in person or through an advocate to present his case. I, therefore, pass the following order:-

Order

The appeal is dismissed with costs in one set.

21st July 19..

Sd/- R.D.Shinde,
District Judge.

Grounds of appeal.

1. That the judgement and decree are contrary to law and facts.

2. That the lower Courts judgement and decree are illegal in-as-much as they were passed without granting the appellant an opportunity to produce his oral evidence in support of his case.

3. That the remark of the lower Court in the judgement delivered in L.C.Suit No. of 1944 that 'as the important issues in both suits are issues of law and can be disposed of without any oral evidence. I have exhibited the documents produced in behalf of both sides heard arguments of learned pleaders and I propose to record my findings upon the issues' are not justified by facts and against principles of law.

4. That only issues 2 - 3 and 5 were fixed as preliminary issues and arguments heard thereon.

5. Issues 1 and 4 were not fixed for hearing at all on the date when arguments were heard on issues 2 - 3 and 5 only.

6. That the appellant wanted to produce both oral and documentary evidence on issues 1 and 4.

7. The lower Court has recorded findings on issues 1 and 4 without allowing any opportunity to the appellant to produce his evidence both oral and documentary and without hearing arguments on these issues.

8. Arguments were adduced only issues 2 - 3 and 5 on the date of hearing fixed for preliminary hearing.

9. The most important issue being issue No.4 finding

is recorded without an opportunity to produce evidence and hearing arguments. The same is the case with issue No.1.

10. It was a surprise to the appellant when he found the whole disposed of after recording findings on all issues.

11. There has been failure of justice on account of this failure to grant any opportunity to adduce oral and documentary evidence on issue 1 and 4 and without hearing arguments on the said point.

12. Evidence both oral and documentary necessary for the disposal of the suit were excluded.

13. That the finding of the lower Court that suit fails on account of absence of proper notice is wrong and against law.

14. That the lower Court erred in holding that the Civil Court has no jurisdiction under section 50-A of the Co-operative Societies Act.

15. That that the order of the Deputy Registrar is not ultra vires for reasons mentioned in the plaint is also wrong.

16. That the principal judgement in L.C.Suit No.1 of 1944 does not discuss the contentions raised by this plaintiff in his suit at all.

17. That the lower Court has not properly understood the case of this plaintiff.

18. The whole judgement is vitiated by the fact that issues 1 and 4 have been decided without giving any hearing at all as required by law.

19. Documentary evidence has not been properly understood.

20. Principles of law have not been properly understood and applied.

21. The remarks of the lower Court that

' However written statements were put in by one Mr. C.D.Gunaste, pleader from Belgaum presumably on behalf of 11 the three persons named in Ex.51 i.e. Messrs. M.B.Jakati, K.N.Nadger and V.B.Desai' are incorrect and contrary to facts.

22. That the lower Court ought to Held that the refusal of Government to give a ~~approximate~~ personal hearing was contrary to law and vitiates the order of the Deputy Registrar

23. Other points mentioned in the plaint have not been considered at all.

" T r u e C o p y "

Sd/- B.A.Joshi,

Clerk of the Court..

2920—10.000—6-47—R(a)*

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ
ಹುಕುಮ್ನುನಾಮೆಯು
(ಆರ್ಡರ್ ೪೧, ರೂ. ೩೫).

(ಫಾರ್ಮ್ ನಂಬರು ೯,
ಪರಿಶಿಷ್ಟ ಗ, ಶೆಡ್ಯೂಲ ೧)

ಹುಕುಮನಾಮೆಯು

ಧಾರವಾಡ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ್ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ.

ಮುಕ್ಕಾಮು ಧಾರವಾಡ ಇಲ್ಲಿ ನಿ॥

ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು ೨೪೪ ೧೯೪೪ ನೇ ಸ್ಯೆಕೆ

ಮಂಕಳಗಾವ ಬೀರಪ್ಪಾಯ ಮೇಲಿನಮನಿ
ನಾಂ ಬಹುದರ್

} ಅಪೀಲೆಂಟ (ಮೊದಲನೇ ವಾದಿ)

ಎರುದ್ಧ

(೧) ಬಸವಾಪುರ ಮ್ಯುನಿಸಿಪಲ್ ಸರಕಾರ
ಮುಖ್ತಾರ ಎಲೆಕ್ಷನ್

} ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ತಿರಸ್ಕರಿಸಿದ)

ಧಾರವಾಡ ಇಲ್ಲಿಯ ನೇ ವರ್ಗ ಸಬ್ ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೪ ನೇ ಇಸವಿಯ ನಂಬರು ೨೯ ನೇದರಲ್ಲಿ ತಾರೀಖು ೩೧ ನೇ ಮೇ ತಿಂಗಳ ಸನ್ ೧೯೪೪ ನೇ ಇಸವಿಯ ಹುಕುಮುನಾಮೆ ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ ನೀಲಿ ಹೇಳದ ಮಂಕಳಗಾವ ಬೀರಪ್ಪಾಯ ——— ಇವನ ನೇಗ ತಾರೀಖಿನ ಹುಕುಮುನಾಮೆ ಮೇಲೆ ಧಾರವಾಡ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ್ ಜಜ್ಜ ——— ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೪ ನೇ ಇಸವಿ ತಿಂಗಳಿನ ೨೧ ತಾರೀಖಿನ ದಿವಸ R. D. Shirvada ಇವರ ಮುಂದೆ, ಅಪೀಲೆಂಟನ ತರ್ಫಿನಿಂದ ಬಿ॥ ಗೋಕಾಕ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ಮಾ॥ ಮುಧೋಳಕರ (ಸರಕಾರೀ ವಕೀಲರು) ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದದ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದೇನಂದರೆ ಬರುವದಿಲ್ಲ—

ಈ ಅಪೀಲು ವಿಚಾರಣೆಗೆ ಬಂದಿದ್ದಕ್ಕೆ ಅಪೀಲೆಂಟರು ಹಾಜರಾಗಿಲ್ಲ ಮತ್ತು ಅವರ ಪರವಾಗಿ ಯಾರೂ ಹಾಜರಾಗಿಲ್ಲ ವಿಚಾರಣೆಗೆ ತೆಗೆದುಕೊಳ್ಳಲಾಗಿಲ್ಲ.

ಅಧಿಸೂಚನೆ

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ
ಅಧಿಸೂಚನೆಗಳ ಪ್ರಕಟಣೆಗಾಗಿ
(ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರದಲ್ಲಿ ಪ್ರಕಟಿಸಲು)

ಸಂಖ್ಯೆ: ಆಇ ೨೨೭ ಎಲ್‌ಕೆಎ ೨೦೧೭

ಬೆಂಗಳೂರು, ದಿನಾಂಕ: ೨೫ನೇ ಜನವರಿ ೨೦೧೭

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ (ಆಡಳಿತ) ಇವರಿಂದ ಪ್ರಕಟಣೆಗಾಗಿ ಸ್ವೀಕರಿಸಲಾಗಿದೆ.

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ ರೂಪಾಯಿಗಳನ್ನು ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲೆಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ	ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ
೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	೧೫	೦	-	೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	-	-	-
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ	-	-	-	೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ	-	-	-
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....	೧	೧೪	-	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ	-	-	-
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ	೬	-	-	೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ	-	-	-
೫. ೧೫೨೦೦/- ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೭೫	-	-	೫. ೧೫೨೦೦/- ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ ..	೭೫	-	-
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	೩೯	೧	-	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	-	-	-
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ				೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು	-	-	-
				೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	-	-	-
ಒಟ್ಟು....	೧೪೦	೦	-	ಒಟ್ಟು....	೭೫	-	-

ಈ ಹೊತ್ತು ತಾರೀಖು ೨೧ ತಿಂಗಳು ೨೦೧೯ ಸನ್ ೧೯ನೇ ಇಸವಿಯ ದಿನ ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು, ಸಮನಾಗಿ ಅದೆ.

Sd/- R D Shunde
Sd/- [illegible] Baitmangalkar

ಕಾರಕೂನ.

(SEAL)

Sd/- [illegible]

Sd/- B J Mahimat

ಅಪೀಲೆಂಟ ವಕೀಲ

ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ಮೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವದಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳು ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಸಾತವಾಗುವವು (ಅಂದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.)]

Suits.

Dharwar.

For a declaration that the order passed by the Deputy Registrar, Co-operative Societies, on 21st April 1942 in case No. MSF 1 of 1940 and confirmed in appeal by Government on 3rd November 1942, is illegal and ultra vires and for costs and other reliefs.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 13032
Bombay Castle, 16th November 1949.

Read Government Resolution, Legal Department, No. 872, dated the 31st January 1946.

In the Court of the First Class Sub-Judge, Dharwar. Civil Suit No. 2 of 1944.		Letter from the District Government Pleader, Dharwar, No. 637, dated the 29th July 1949, stating that the Civil Appeal No. 248 of 1945 filed by the plaintiff in the suit noted
Venkatrao Bhimrao Desai	Plaintiff;	
Versus		
(1) The Provincial Government of Bombay. (2) The Registrar, Co-operative Societies, Bombay Province, Poona.	Defendants.	
Claim - Rs. 200/-		

in the margin was decided by the District Judge, Dharwar, on 21st July 1949, when the following order was passed :-

"The Appeal is dismissed with costs in one set."

Letter from the District Government Pleader, Dharwar, No. 907, dated the 20th October 1949, forwarding uncertified copies of the judgment and decree.

RESOLUTION.- The result of the appeal is recorded.

By order of the Governor of Bombay,

original R. M. Mehta

R. M. MEHTA,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, S.D.,
The Registrar of Co-operative Societies and Director of Rural Development, Poona ,
The Collector of Dharwar.

Issued copy 16/11

Submitted for signature 14/11

LDR.
11.11
14.XI

Submitted of this issue
File No. S.ONT. 3/45

21/X.1

21/11

1P
130

87

-2-

Rs.As.Ps. Fls. 8

6223

Sectioner Mr. G.R.Desai. 1-0-0
Examiner Mr. D.T.Patwardhan)
Reader Mr. D.R. Gokarn) 0-4-0
Paper charges. 0-0-6

Total 1-4-6

261

Rupee one, annas four and pies ~~six~~ six only.

Superintendent D.D.
29-3-1949.

Ready on 2-12-48.
" 29-3-49
Copy delivered on 18-7-49
Sent by V.P.P. Regd. Post on

Assistant Superintendent

Appeal No. 470 of 1945 from Original Decree.

Madhavrao Balkrishna Jakati ... ... Appellant.
(Original plaintiff).

versus

The Provincial Government
of Bombay and another ... ... Respondents.
(Original defendants).

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

Appeal against the decision of M.S.Bagali Esquire. Civil Judge, (Senior Division) at Dharwar in Special Suit No. 1 of 1944.

Mr. K.G. Datar, Advocate for the Appellant.

The Additional Assistant Government Pleader for the Respondents.

Coram :- Chagla C.J. and Bhagwati, J.

1st December 1948.

Oral Judgment: (Per Chagla C.J.) :-

The plaintiff, the appellant before us, was the Managing Director of the Urban Co-operative Bank, Ltd. from 1923 to 1932. The Bank went into liquidation in 1939. It was found that while the plaintiff was acting as Managing Director he had advanced various sums of money as loans which were lost to the Bank. An inquiry was made by the Deputy Registrar and he came to the conclusion that the loss was due to the negligence and misfeasance of the plaintiff, and he ordered that the plaintiff should make

87

-2-

Rs.As.Ps. Fls. 8

£223

Sectioner Mr. G.R.Desai.	1-0-0	
Examiner Mr. D.T.Patwardhan)		
Reader Mr. D.R. Gokarn)	0-4-0	261
Paper charges.	0-0-6	
Total	1-4-6	

Rupee one, annas four and pies ~~xx~~ six only.

Superintendent D.D.
29-3-1949.

Copy delivered on 2-12-48.
" " 29-3-49
Copy delivered on 18-7-49
Sent by V.P.P. on
Regd. Post

Assistant Superintendent

Appeal No. 470 of 1945 from Original Decree.

Madhavrao Balkrishna Jakati ... ... Appellant.
(Original plaintiff).

versus

The Provincial Government
of Bombay and another ... ... Respondents.
(Original defendants).

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

Appeal against the decision of M.S.Bagali Esquire. Civil Judge, (Senior Division) at Dharwar in Special Suit No. 1 of 1944.

Mr. K.G. Datar, Advocate for the Appellant.

The Additional Assistant Government Pleader for the Respondents.

Coram :- Chagla C.J. and Bhagwati, J.

1st December 1948.

Oral Judgment: (Per Chagla C.J.) :-

The plaintiff, the appellant before us, was the Managing Director of the Urban Co-operative Bank, Ltd. from 1923 to 1932. The Bank went into liquidation in 1939. It was found that while the plaintiff was acting as Managing Director he had advanced various sums of money as loans which were lost to the Bank. An inquiry was made by the Deputy Registrar and he came to the conclusion that the loss was due to the negligence and misfeasance of the plaintiff, and he ordered that the plaintiff should make

good the loss to the Bank. From this order of the Deputy Registrar the plaintiff appealed to Government and the Government rejected the appeal. The plaintiff then filed this suit for a declaration that the order made by the Deputy Registrar was ultra vires. The learned trial Judge dismissed the plaintiff's suit.

In appeal Mr. Datar for the plaintiff is confronted with a difficulty which seems to be almost insuperable The barrier he has to cross is section 51 of the Bombay Co-operative Societies Act of 1925 which ousts the jurisdiction of the Civil Court. That section, to the extent to which it is material, provides that " Save in so far as it is expressly provided in this Act no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a Society under this Act, " and it cannot be disputed that the question that the plaintiff wants to be agitated is a question that arises in the winding up of the Bank. It also cannot be disputed that the Deputy Registrar when he made the order made it with jurisdiction. Section 50A empowers the Registrar to examine into the conduct of a person who is alleged to have misapplied or retained or become liable or accountable for any money or property of the scoeity, and it was acting under this section that the Deputy Registrar made the order complained of. Now, various grounds are given in the plaint why according to the plaintiff the order of the Deputy Registrar was ultra vires We have examined these grounds and we feel that in effect the plaintiff wants to appeal from the order and decision of the Deputy Registrar. Now, it is well established that when a person acts with jurisdiction, he has power to decide both rightly and wrongly, and if the jurisdiction of the Court is ousted a party cannot be heard to say that the action of the person acting with jurisdiction is ultra vires merely because the order that he has made is wrong or cannot be sustained on the

8-7 263 7

evidence before him. We therefore, agree with the learned trial Judge that the suit is not maintainable and that the jurisdiction of the Court to consider this matter has been ousted by section 51 of the Act.

3 Mr. Datar, realising his difficulty , has not - really seriously pressed us to give his client the relief which he has sought in the suit. He has frankly told us that the reason why his client launched this litigation was in order to clear his character, and his main grievance is that when he appealed to Government under section 64 of the Act the Government dismissed his petition without a hearing. All that he wants is an opportunity to be heard to explain his case and to point out to Government that he was really not guilty of any negligence or misfeasance. While dismissing the - appeal we would strongly recommend to Government to give he appellant an opportunity to be heard either in - person or through an Advocate. It is always desirable that a subject should feel that his case has not gone unheard, and whatever ultimate decision or conclusion the Government may come to, that decision or conclusion would be considerably fortified if it is arrived at after giving an opportunity to the appellant to present his case. The result therefore, is that the appeal fails and must be dismissed with costs.

By ~~xx~~ order of the Court.
Sd. S.H. Belavadi.
Deputy Registrar.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

True Copy

For Deputy Registrar.

The 29th day of March 1949

Rs.As.Ps. Fls. 16

Sectioner Mr. G.R.Desai	2-0-0
Examiner Mr. D.T.Patwardhan Reader Mr. D.R. Gokarn	0-8-0
Paper charges.	0-0-9
Total	2-8-9

Rupees two annas eight and pies nine only.

...ed for on 2-12-48.
...v on 2-2-49
...ned on 18-7-49
...t by V.P. P. Regd. Post on

...ant Superintendent

Superintendent D.P.
2-2-1949

In the High Court of Judicature at Bombay.
Wednesday the 1st day of December 1948.
Appeal No. 470 of 1945 from Original Decree.

Madhavrao Balkrishna Jakati ... ... Appellant
(Original plaintiff).

versus

1. The Provincial Government of Bombay
2. The Registrar, Co-operative Societies
Bombay Province , Poona ... ... Respondents.
(Original defendants).

Claim Rs. 200 for Court fees.
Rs. 15,100 for Advocate's fees.

The plaintiff sued for a declaration that the order passed by the Deputy Registrar of Co-operative Societies on 21st April 1942 under Section 50A of the Societies Act directing the plaintiff to contribute a sum of Rs. 15,100 towards the assets of the Urban Co-operative Bank, Dharwar, etc. with costs of the suit.

The Original Suit No. 1 of 1944 was decided by the Civil Judge of Senior Division, Dharwar, who dismissed it with costs.

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue by the Honourable Mr. Justice Lokur on the 21st day of December 1945.

The grounds of objection to the decision appealed against are :-

1. That the findings of the lower court on the issues Nos. 1,4,5,6 and 7 are wrong.

2. That the learned Civil Judge erred in holding that the important issues raised in the suit could be disposed of without any oral evidence.

3. That the lower court ought to have held that the averment in the plaint regarding the notice was a sufficient compliance with the provisions of section 80, Civil Procedure Code.

4. That the lower court ought not to have held that the plaint was liable to be rejected even assuming that the statement in the plaint regarding the delivery of the notice had not been expressly averred in the language of the section.

5. That when the fact of the notice had not been denied by the defendants, the technical omission, if any, to make the necessary statement in the words of the section could have been cured by a formal amendment of the plaint in that plaintiff.

6. That the appellant respectfully prays that if this Hon'ble Court were pleased to hold that the plaint ought to contain a statement expressly in terms of the section regarding the delivery of the notice, plaintiff may be allowed to amend plaint in that behalf.

7. That on the day when the suit was taken up for hearing the suit had been fixed only for the preliminary hearing on issues Nos. 2,3,4 and 6 and the learned Civil Judge ought to have in the first instance proceeded to record his findings on those issues relying upon the averments made in the plaint.

8. That the other issues which had been framed in the suit were not issues of law,only, and the learned Civil Judge erred in recording his findings thereon without reference to the appropriate evidence in the case and without allowing plaintiff to substantiate his contentions by adducing evidence on his behalf.

9. That the learned Civil Judge erred in treating issues Nos. 1 and 5 as preliminary issues and in holding that the suit could be disposed of without any evidence.

9; 267 4

10. That when the learned Civil Judge treated (though erroneously) issues Nos. 1 and 5 also, as issues of law only, he ought to have recorded his findings on them, taking the statements in the plaint as true and proved.

11. That when the suit had been fixed for the preliminary hearing, the plaintiff could not adduce his evidence and examine his witnesses on that day but submitted his - arguments only on issues Nos. 2,3,4 and 5.

12. That plaintiff was anxious and ready to adduce oral and documentary evidence on his behalf at the proper time when after the preliminary hearing, the suit had to be set down for hearing on the other issues of fact.

13. That the learned Civil Judge ought not to have recorded his findings on issues Nos. 1 and 5 along with the other issues when the parties did not know that those issues would also be considered and found upon at the preliminary hearing.

14. That the procedure followed by the learned Judge was contrary to law and has occasioned failure of justice.

15. That the lower court ought to have held that the Deputy Registrar had no jurisdiction to hold the inquiry and pass orders under section 50A of the Society Act.

16. That the lower Court has not considered the several circumstances in the case which showed that the Deputy Registrar was unduly and unnecessarily prejudiced against the plaintiff.

17. That the lower court ought to have held that the Deput Registrar had rendered himself incompetent to hold the inquiry of the nature contemplated by section 50A.

18. That the lower Court ought to have held that plaintiff was not given adequate time by the Deputy Registrar to prepare his defence.

19. That the Deputy Registrar did not follow the proper procedure in the course of his inquiry and the procedure followed by him offended the rules of natural justice.

20. That the lower court ought to have held that plaintiff's liability under section 50A if any could arise only after it was satisfactorily proved that the remedy against the debtors and their sureties was found to be of no avail.

21. That the learned Civil Judge ought not to have relied merely upon the passages from the Deputy Registrar s report for determining whether it had been vitiated by illegality and irregularity as contended by the plaintiff.

22. That the lower court ought to have held that the orders of the Deputy Registrar had been made without jurisdiction and therefore did not bar a suit for reliefs in consistent with those orders.

23. That the Registrar could exercise the prescribed powers only if the conditions mentioned in the statute (in the case , the Society's Act 1925) were satisfied but had no jurisdiction to determine finally whether these conditions were in fact satisfied.

24. That the lower Court ought to have held that it was for the Civil Court alone finally to adjudge whether there was any misfeasance or breach of trust or whether the other conditions stated in section 50A had in fact been satisfied.

25. That if the Civil Court independently came to the conclusion that the conditions in the section had not in fact been satisfied, the order passed by the Registrar under section 50A would be ultra vires and a nullity and there would be no bar to the present suit under section 51.

26. That the lower court has not applied the correct rule of law and procedure to the facts of the pre ent case.

27. That the lower court ought to have held that the order passed by the Government in the appeal preferred under section 64 was not binding upon the plaintiff.

28. That the lower court erred in holding that Mr. C. D. Gumaste was plaintiff's pleader and that he submitted arguments either before the Government or before the Deputy Registrar.

29. That the lower court has not framed proper issues in the case.

95 269 43

30. That the lower court erred in fixing the suit for preliminary hearing on some issues only when the suit had already been fixed for final hearing on all the issues on more than one occasion.

31. That the order as to costs and the order as regards valuation for jurisdiction and pleader s fees are wrong.

32. That the decree of the lower court is wrong in law.

Coram :- Chagla C.J. and Bhagwati.

For the reasons stated in the accompanying judgment, the Court confirms the decree of the lower Court and dismisses the appeal with costs. The Court strongly recommends to Government to give the appellant an opportunity to be heard either in person or through an Advocate.

1st December 1948. Sd. S.H. Belavadi.

Deputy Registrar.

Bill of Costs in the High Court.

By the Appellant.	Rs.As.Ps.
Stamps for Memorandum of Appeal	18-12-0
Stamps for copies of decree and judgment.	1-14-0
Stamps for Vakalatnama.	2-8-0
Bhatta for process.	10-0-0
Sectioner's fee.	33-15-0
Advocate's fee.	341-0-0
Printing charges.	11-0-0
Copying charges for printed paper books	7-8-0
Total	426-9-0

COURT APPELLATE SIDE CERTIFIED COPY

	Rs.As.Ps.
By the respondent/s	
Stamps for Vakalatnama. (Govt. Pleader appears)	0-0-0
Advocate s fee.	341-0-0
Translation fee.	1-0-0
Total	342-0-0

(Seal) Sd. S.H. Belavadi.
Deputy Registrar.
The 1st day of December 1948.

True Copy

for Deputy Registrar.
The 2nd day of ~~January~~ February 1949

Suits:

Dharwar.

For a declaration that the order passed by the Deputy Registrar Co-operative Societies, on 21st April 1942, in case No.MSF 1 of 1940 and confirmed in appeal by Government on 3rd November 1942 is illegal and ultra vires and for costs and other reliefs.

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No.9060

Bombay Castle 11th August 1949.

Read Government Resolution, Legal Department, No.1970 dated the 9th March 1946

Letter from the Government Pleader, High Court, Bombay, No.16, dated the 3rd January 1949, stating that the 1st Appeal No.470 filed by the plaintiff in the suit noted in the margin was decided by the High Court Bombay, on 1st December 1948, when the following order was passed:

In the Court of the First Class Sub-Judge,
Dharwar.
Civil Suit No.1 of 1944.
Maunavrao Balkrishna Nakati. ...Plaintiff
Vs.
1). The Provincial Government of Bombay
2). The Registrar, Co-operative Societies
Bombay Province,
Poona. .Defendants.

> The court confirms the decree of the Lower Court and dismisses the appeal with costs, the Court strongly recommends to Government to give the appellant an opportunity to be heard either in person or through an advocate.

Letter from Government Pleader, High Court, Bombay, No.3712, dated the 29th July 1949, forwarding certified copies of the judgment and decree.

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,

R.M.MEHTA.
Assistant Secretary to Government.

To

The Revenue Department,
The Registrar, Co-operative Societies and Director of Rural Development, Poona,
The Commissioner, Southern Division,
The Collector of Dharwar.

16.

48

REVENUE DEPARTMENT
File No. K.8.49 (47)
Date
Serial No. J 715